Human Rights and Indigenous Peoples

HUMAN RIGHTS AND INDIGENOUS PEOPLES

J.K. DAS

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Dedicated
to my father
Sri Chitta Ranjan Das
and
to my mother
Smt. Shefali Das

Preface

The demands of the rights of Indigenous Peoples which are relatively recent phenomena leading to political violence, terrorism, murder, have shocked both the national and international societies. At the international level, although rights of the members/citizens of a State are being protected under the human rights framework, the general human rights are very much individualistic and protect mainly individual interests. On the other hand, as the problems of the Indigenous Peoples are collective problems, general human rights are incapable to cope up the problems of the Indigenous Peoples. In this situation Indigenous Peoples have been pursuing various claims which have resulted into a conflict between State and Indigenous groups and become a challenge to the efficiency of all legal systems. Hence, the International Labour Organisation adopted **Convention No. 169** of 1989 for the specific protection of the Indigenous Peoples. Similarly in 1993, the Working Group on Indigenous Populations created by the United Nations Human Rights Sub-Commission has prepared a **Draft Declaration on the Rights of Indigenous Peoples** which created a new awareness about the rights of Indigenous Peoples. With a view to examine the legal problems pertaining to Rights of Indigenous Peoples, at international level and to examine multiple socio-economic aspects relating to the realisation of the Rights of Scheduled Tribes of India (declared as Indigenous Peoples by the World Bank in the Indian context) in general and in Tripura in particular, the present work had been undertaken. The subject matter of the present book consists of a comprehensive and analytical doctrinal study of the realisation of the rights of Indigenous Peoples and evaluation of the role and

impact of the political process in realisation of the rights of Indigenous Peoples in Tripura with the help of the empirical study. Chapter 1 describes the background, scope of inquiry, methodology and framework of the study. Chapters 2, 3, 4 of the book embody the results of doctrinal study whereas Chapter 5 contains the result of empirical study and Chapter 6 is devoted to the overall conclusions derived at by the present work. Initially it was planned to undertake the empirical work at village level in Tripura but due to the Tribal insurgency in Tripura it had not been possible to carry out the work at village level. Hence, the empirical work had to be delimited upto headquarter level only. The present work and the conclusions drown on the basis of the present study are although primarily related to the examination of the role and impact of new political process in realisation of the rights of Scheduled Tribes of Tripura, the study may prove to be useful and beneficial for making the political process and administrative machinery provided thereby more efficient for the purposes of the realisation of the rights of Scheduled Tribes. It is also hoped that the present work would also be beneficial to the planners, administrators, law makers and other personnel associated with the functioning of the administrative machinaries set up by the Central and State governments under the new political process evolved under the Constitution of India' for the purposes of recognition and realisation of various Rights of Scheduled Tribes in reality (treated to be Indigenous Peoples at international level) of Indian in general and the State of Tripura in particular.

The author feels his duty and pleasure to acknowledge his sense of profound gratitude towards his academic guide Dr. Surendra Nath, Professor of Law, and Head and Dean, Law School, Banaras Hindu University, who proposed, during the early stages of work, organic modification of the scope of inquiry and framework of the work. His devotion to duty will remain an ideal for the author in future. The author expresses his thanks to Dr. B.C. Nirmal, Reader in Law, B.H.U. The author also takes this opportunity to express his special thanks to Prof. Mrs. Om Priya Shrivastava, Department of Political Science, Mahatama Gandhi Kashi Vidyapith, Varanasi, for her academic patronage which the author gives values. The author is also thankful to Mr. Shachindra Nath, Manager - Depository, Fortis Securities Limited, New Delhi. The author must record the special thanks for Sabita Roy, Advocate,

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(J.K. DAS)

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CHAPTER - 1

Introduction

I. BACKGROUND

Indigenous Peoples[1] are generally considered those who inhabited a country or a geographic region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means. The Bushmen of Botswana, the Ainu of Japan, the Pygmies of Central Africa, the Inuits of the Arctic, the Yanomami of Brazil, the Maori of New Zealand and the Tribals of India may be as different as day and night in their cultures, customs and traditions. But they, are some of the 300 million[2] "Indigenous" individuals worldwide, face a common threat : being civilized to extinction. Their names are many : Aborigines, Indians, Autochthonous People, Natives, First People or Tribals. But all "Indigenous Peoples" belonging to 5,000 or so groups scattered in more than 70 countries are decendants of the original inhabitants of their lands. The contribution of these "Peoples" to modern civilisation is pervasive. They were the original cultivators of such staple foods as peppers, potatoes, peas, sugar cane, garlic and tomatoes. They were the first to develop and use most of the world's plant based pharmaceuticals, from aspirin to quinine; and have given the English language such words as canoe, barbecue and squash. Despite their great influence on the food we eat, the languages we speak, and the sciences and medicines we use to better our lives, "Indigenous Peoples" have often, at best, been forgotten and, at worst, been driven from their lands, robbed of their cultures, excluded from political decision making, brutally socialised and economically exploited.

The first international body to take steps to promote the rights of "Indigenous Peoples" was the *International Labour Organisation* (ILO). As early as 1921, the ILO carried out a series of studies on indigenous works. In 1926, it adopted a number of conventions and recommendations concerning forced labour and recruitment practices of Indigenous groups. It adopted in 1957, *Convention No. 107* to promote improved social and economic conditions for indigenous populations[3]. Subsequently, ILO has revised *Convention No. 107* and adopted *Convention No. 169* on Indigenous and Tribal Peoples in 1989[4] which affirms that no State or social group has the right to deny the identity to which an Indigenous People may lay claim, and places responsibility on States for ensuring with the participation of Indigenous Peoples, their rights and integrity.

The *United Nations Educational, Scientific and Cultural Organisation* (UNESCO) has also encouraged cultural expression and activities by Indigenous Peoples, particularly through its international conventions it elaborated to protect cultural property rights.

A major turning point came in 1970, when the United Nations (UN) Human Rights *Sub-Commission on Prevention of Discrimination and Protection of Minorities* recommended that a detailed study be made of discrimination against Indigenous Populations. In 1971, *Mr. Jose R. Martinez Cobo* (from Ecuador) was appointed *Special Rapporteur* for the study which was to suggest national and international measures for eliminating discrimination. His final report was submitted to the Sub-Commission during the years 1981-1984[5]. The *Special Rapporteur* addressed a wide range of human rights problems. They include a definition of Indigenous Peoples, the role of intergovernmental and non-governmental organisations, the elimination of discrimination, and basic human rights principles, as well as special areas of action in fields such as health, housing, education, language, culture, social and legal institutions, employment, land, political rights, religious rights and practices, and equality in the administration of justice and realisation of their rights.

Over the past decade, the UN *Working Group on Indigenous Populations*, created by the *Sub-Commission* in 1982[6], has been the

focus of Indigenous rights activities within the UN system. The Working Group has prepared a *Draft Declaration on the Rights of Indigenous Peoples*[7] and submitted it to the *UN Commission on Human Rights* for consideration, which is expected to be adopted by the *UN General Assembly* soon. Preambular Paragraphs of the draft highlights the affirmation that "all indigenous peoples are free and equal in dignity and rights to all peoples" and that there is an "urgent need to respect and promote the rights and characteristics of indigenous peoples, especially their rights to the lands, territories and resources, which stem from their history, philosophy, cultures and spiritual and other traditions as well as from their political, economic and social structures". The draft's operative Paragraphs proclaim that Indigenous Peoples have the right to : (i) be protected from genocide, (ii) maintain their distinct ethnic and cultural identities, (iii) use their own languages, (iv) own and control their traditional lands, (v) be compensated for confiscated lands, (vi) be consulted on development projects affecting them, and (vii) participate "on an equal footing" in political, economic, social and cultural life.

In order to remove discrimination against Indigenous Peoples and raise public awareness of their plight, the *UN General Assembly* on 18 December 1990 adopted resolution 45/64 and proclaimed the year 1993 as the *International Year of the World's Indigenous Peoples*. With the theme - *Indigenous Peoples : A New Partnership*, the year aimed primarily to strengthen international cooperation for the solution of problems faced by Indigenous Peoples in the areas of human rights, environment, development, education and health. To encourage the new partnership, the *Year* stressed on the need to foster :

(i) participation of Indigenous Peoples in the planning, implementation and evaluation of projects affecting their future and living conditions,

(ii) knowledge about international standards, developed over the past several decades by UN bodies, for protecting the rights of Indigenous Peoples,

(iii) public awareness of the situation of Indigenous Peoples and the threats to their existence, through special observances,

meetings and other promotional and cultural activities as well as media coverage.

Besides the above mentioned steps, another positive step has been taken by the *UN General Assembly* towards the promotion and protection of the rights of Indigenous Peoples. In its resolution 48/163 of December 21, 1993 the *UN General Assembly* has proclaimed the *International Decade of the World's Indigenous Peoples 1994-2004*. The decade was commenced on December 10, 1994 which emphasised the role of international cooperation in solving the problems faced by Indigenous Peoples in the areas, identified earlier, such as human rights, environment, development, education and health.

Thus, problems of Indigenous Peoples are basically human rights problems. The ILO and UNESCO are partners, along with the UN *Commission on Human Rights* to evolve the meaningful rights of the Indigenous Peoples. A welcome change is taking place at national and international levels as Indigenous Peoples form their own organisations and actively seek to improve their situations. As issues such as sustainable development are accorded greater political weight, the international community has also shown greater respect for the special relationship that Indigenous Peoples have with their lands and ancient cultures. Some communities wish to preserve their distinctive ancient culture apart from the mainstream, others seek the path of integration into modern society. Besides this, modern human rights are universal, most of the universal human rights provide individual protection. But the promotion and protection of human rights of Indigenous Peoples require a special sensitivity to particular situations as their problems are collective problems[8].

Although the Union Government found itself unable to define who the Indigenous Peoples were in India, the World Bank on its own classified in 1991 the *Scheduled Tribes* as Indigenous Peoples in India for various developmental programmes. Such *Scheduled Tribes* are spread over the entire nation. However, the conditions in the *Tribal Areas* of the North-Eastern Region consisting of Assam, Meghalaya, Tripura and Mizoram are very different from those in the tribal areas of other parts of India. These tribal areas are divided into large districts inhabited by single tribes or fairly

homogeneous groups of tribes with highly democratic and mutually exclusive tribal organisations who have not assimilated much with the life and ways of the other people in the States. These areas have hitherto been anthropological specimens and the tribes living therein have still their roots in their own culture, custom and civilization. Since the tribal people in this region have been living for centuries under their own social organisations with few outside contacts, the introduction of the type of administration prevailing in the rest of the country had not been purposeful. Moreover, by introducing the type of administration prevailing in the rest of the country in such areas an imminent danger of opening the way for non-tribal persons to exploit the local populace also existed. Thus, pending the creation of proper conditions for the eventual social and political assimilation of these tribes, certain special provisions were made in the *Fifth* and *Sixth Schedules* to the Constitution for the administration of tribal areas in India with the objectives of promotion and protection of the distinct traditions, customs, civilization as well as ensuring over all development of the tribal people in India. The *Fifth Schedule* was meant to be applicable to any State other than Assam, Meghalaya, Tripura and Mizoram and *Sixth Schedule* was applicable to the States of Assam, Meghalaya, Tripura and Mizoram.

The scheme of administration under *Sixth Schedule* was almost wholly based on the recommendations of the *North-East Frontier Tribal and Excluded Areas Sub-Committee of the Constituent Assembly* of India. The Committee was set up to report[9] to the *Constituent Assembly* on the scheme for administration of the tribal areas. The scheme was conceived with a view to building up *Autonomous Administration* in these areas so that the tribal people may continue to follow their traditional way of life with such changes as they themselves may like to introduce. In its report the committee took three factors into consideration for proposing a separate scheme of administration for these areas, which were ultimately called the *Autonomous Districts*, viz., (a) the distinct social customs and tribal organisations of the different people as well as their religions beliefs, (b) the fear of exploitation by the people of the plains on account of the latter's superior organisation and experience of business, and (c) the fear that unless suitable financial provisions were made, or powers were conferred upon the local councils themselves, the provincial government might

not, due to pressure of the plains people, set apart adequate funds for development of the tribal areas[10]. The committee further felt that assimilation of people of these areas with the rest of the country would not take place by sudden breaking up of tribal institutions, what was required was evolution of growth on the old foundations. This meant that the evolution should come as far as possible, from the tribes themselves, and it was equally clear that contact with outside institutions was necessary, though not in a compelling way.

The *Sixth Schedule* purported to provide for a self-contained code for the governance of tribal areas forming part of these States and deal with all the relevant topics in that behalf. By Paragraphs 1 and 20 the whole tribal area is divided into Autonomous Districts. The areas described in the Table appended to Paragraph 20 of the *Sixth Schedule*, consisting of Part I (for Assam), Part II (for Meghalaya), Part IIA (for Tripura), Part III (for Mizoram), constitute the tribal areas within these States. Paragraph 2 provides for the constitution of *District Councils* and *Regional Councils* whereas Paragraph 3 mentions their powers. Paragraphs 4 and 5 contain provisions relating to the administration of justice in these areas. Paragraph 6 deals with powers of the *District Council* to establish primary schools etc. Paragraph 7 deals with the district and regional funds. Paragraph 8 refers to powers to assess and collect land revenue and to impose taxes. Paragraph 9 contains provisions relating to licences or leases for the purpose of prospecting for, or extraction of, minerals. Paragraph 10 confers on the District Council's power to make regulations for the control of money-landing and trading by non-tribals. Paragraphs 11, 12, 12A, 12AA and 12B deal with the publication of laws, rules and regulations made under the Schedule and application of Acts of Parliament and of legislature of the State to the *Autonomous Districts*, etc. The power of *District Councils* to make rules is, however, expressly limited by the provisions of the *Sixth Schedule* which has created them and circumscribe their power. Paragraph 13 is concerned with the question of estimated receipts and expenditure pertaining to *Autonomous Districts* which have to be shown separately in the annual financial statement. Paragraph 14 is concerned with appointment of the commission to inquire into and report on the administration of these areas. Paragraph 15 deals with the annulment or suspension of Acts and Resolutions of *District and Regional Councils*. Paragraph 16 deals with dissolution

of *District or Regional Council*. Paragraph 17 is concerned with the exclusion of areas from *Autonomous Districts* in forming constituencies in such districts. Paragraph 19 deals with transitional provisions. Paragraph 20A deals with the dissolution of the Mizo District Council after Constitution of Mizo Hills as a Union Territory. Paragraph 20B provides for *Autonomous Regions* in the State of Mizoram to be *Autonomous Districts* and Paragraph 20C contains certain provisions on interpretation. Under Paragraph 21, Parliament can make an amending law by way of addition, variation or repeal of any of the provisions of the *Sixth Schedule* and when such an amendment is made, reference to it shall naturally be considered as a reference to such schedule as amended. In other words, Parliament is clothen with legislative competence of the widest amplitude in relation to any changes it likes to make in any of the provisions contained in the *Sixth Schedule*.

Initially the *Sixth Schedule* was only applicable in the tribal areas in the State of Assam and after reorganisation of North-Eastern Areas, its scope was extended to the States of Meghalaya and Mizoram. However, due to the movement launched by the tribal people of Tripura for the protection of their distinct traditions, customs and civilization, the State Legislative Assembly passed an Act, the *Tripura Tribal Areas Autonomous District Council Act* in 1979 under which the *Tripura Tribal Areas Autonomous District Council* was established. The Act was modelled on the pattern of the *Sixth Schedule* to the Constitution of India. Since then a new political process has started in the State in the year 1982, by establishing *Tripura Tribal Areas Autonomous District Council* (TTAADC) for the purpose of realisation of the rights of the "Indigenous Peoples" living in 68.07% of the State's area catering the interest of 74.69% of the total tribal population living in the area covered by the Council. Even this measure of the State could not satisfy the aspirations of the Tribal People of Tripura, and, thus, ultimately in 1984, the special provisions of the *Sixth Schedule* were extended to the tribal areas in the State of Tripura[11].

The specific reason for the commencement of the new political process was that prior to the Indian independence, Tripura was predominantly tribal inhabited princely State. It merged into Indian Union in 1949[12]. The population pattern of Tripura changed

after independence at an inconceivably rapid rate. Unprecedented influx of displaced persons from East-Bengal altered the balance in such a manner that the tribals were reduced to a minority of 29% of the total population of the State[13]. Under this pressure of immigration, the tribals were gradually pushed into the interior. They either sold their lands or simply abandoned the lands after frequent disputes and clashes. Although various legal protections were provided by the Government, such steps did not register any significant improvement in the situation. As a result, the tribal people began to lose their own culture, custom, civilization as well as economic base. In order to overcome these problems, the TTAADC was established with the objective to hand over certain administrative and legislative authority to the council so that the council may devote concerted attention to all aspects of cultural, social and economic development of the tribal people, who for historical reasons belonged to the weaker sections of society and, thereby, to free them from all kinds of social injustice.

The TTAADC had been vested with the executive, legislative and judicial powers. The executive powers vested in the *Executive Committee* are related to the subjects, like, (i) Land and Land Revenue, Welfare of Scheduled Tribes and Scheduled Caste, Rehabilitation of *Jhumias*, Finance, Administration, Social customs, Regulation of Money Lending and Trade, Any Residual Matters; (ii) Education, Social Education, Information and Cultural Affairs, Youth Programme and Sports, Science and Technology; (iii) Agriculture, Market development, Culture, Cattle Pond and Firms; (iv) Forest, Animal Husbandry, Fisheries; (v) Public Works Department, Transport and Electricity; (vi) Industry, Cooperation, Labour; (vii) Health and Panchayat. On the other hand, under the legislative powers the council had been empowered to frame laws and bye-laws relating to inheritance of property, marriage, divorce, social customs etc. of tribals. As far as administration of justice is concerned, the council had been given the power to establish tribal village courts and District Council Court. The High Court of the State was given only such jurisdiction over these areas as the Governor may specity. As far as financial relation is concerned, the TTAADC had been given the right to get a share of : (i) forest royalties, and license or lease amount granted for the purpose of prospecting or extracting minerals granted by the State Government, and (ii) the amount received from the consolidated

fund of India as grants-in-aid. Normally, the Central and State legislations were not applicable to the TTAADC unless the council so directs by public notification. The council could also make amendments in these Acts. However, the Governor was also authorised to notify that such Acts could not apply to the TTAADC or could apply subject to modifications. In addition to the above, the Governor had been given some supervisory overriding powers which includes *inter alia* : power to appoint commission to examine and report on any matter relating to administration of TTAADC, dissolution of the TTAADC, etc.

More than a decade have elapsed since the formation of the TTAADC, and it is appropriate now to examine in depth the role played by the TTAADC and the impact of this new political process with regard to the achievement of the avowed objectives and suggest the necessary improvements in this new system on the basis of such study. In this background the study has been undertaken.

II. SCOPE OF INQUIRY AND METHODOLOGY

Before the framework of the study is to be described, it is necessary to state the scope of inquiry and methodology of the present study. The present study is proposed to be confined to the realisation of the rights of Indigenous Peoples (regarded as Tribals) in India. At the international level, ILO began work on the issue of Indigenous groups as early as 1921. Since then the development of the rights of Indigenous Peoples is taking place at international level till now. This international development has influenced, directly or indirectly, the framers of the *Fifth* and *Sixth Schedules* to the Constitution of India. Therefore, before a study is to be conducted regarding the realisation of the rights of Indigenous Peoples in India, it is essential to study the rights of Indigenous Peoples at international level. In this regard a number of international instruments are relevant, but ILO *Convention No. 107*, it's revised *Convention No. 169* and *Draft UN Declaration on the Rights of Indigenous Peoples* are to be included in the present study. In addition to these three major instruments, twenty international instruments are to be included in the present study, because as these instruments are closely inter-linked with the rights of Indigenous Peoples at international level. In this connection a large

number of books, reports, journals, documents, background papers of technical conferences are to be consulted, besides international instruments. The rights of Indigenous Peoples (regarded as Tribals) as such have not been recognised in India, but political processes have recognised under the *Fifth* and *Sixth Schedules* to the Constitution for the realisation of the rights of these peoples. Therefore, the present study is proposed to be concentrated on the Indian Constitutional aspects, besides the international aspects. In this connection a large number of books, reports, legislations, debates, leading cases are to be consulted, besides Constitutional provisions. Under the *Sixth Schedule* to the Constitution, nine *Autonomous District Councils* have been working as a means of realisation of the rights of tribals. No study will be completed unless a study is made on a particular *District Council.* Among nine *Autonomous District Councils*, the *Tripura Tribal Areas Autonomous District Council* (TTAADC) is latest one. Therefore, the present study is also proposed to be concentrated on the TTAADC, where the organisational and functional aspects of the TTAADC will be studied. In this connection a large number of Acts, Rules, Regulations, amendments are to be studied, besides books, reports and journals. To substantiate the present study and find out the role and impact of the new Political Process commenced through TTAADC in Tripura, the present study is proposed to be conducted an empirical study. In this connection a number of visits to the TTAADC headquarter, Khumulwng, Tripura, had been made and various data have been collected from the Office of the TTAADC and also discussions were held with the Executive Members, Secretary and Principal Officers of all departments of the TTAADC with a view to find out the achievements of the TTAADC and deficiencies of functioning of the TTAADC. In this way, the methodology adopted in the present study is partly doctrinal and partly empirical.

III. FRAMEWORK OF THE STUDY

Keeping in view the background and the scope of the present study as delineated above, the work is proposed to be divided into five more chapters. The matters to be discussed in these chapters are briefly enumerated below :

1. Definition of Indigenous Peoples

2. Evolution and Recognition of the Rights of Indigenous Peoples at International Level.

3. Evolution and Recognition of Political Processes in Realisation of the Rights of Indigenous Peoples (regarded as Tribals) in India.

4. Old and New Political Processes in Realisation of the Rights of Indigenous Peoples (regarded as Tribals) in Tripura.

5. Concluding Observations

The definition of "Indigenous Peoples" is the most controversial issue at the present time. In determining the scope of the protective provisions to Indigenous Peoples, the problem that current estimates of the size of this group are very inexact. Thus, the Secretary General of ILO speaks of "300 million Indigenous People of widely differing races, living in just about every part of the world". By contrast, UN sources work on the assumption of "200 million Indigenous Peoples". The differing figures result from the fact that it is difficult to encompass the Indigenous Peoples which frequently lead a nomadic existence in inaccessible areas. Therefore, before examination of any right of Indigenous Peoples or any process of realisation of their rights, it is essential to examine the definition of Indigenous Peoples. Hence, *Chapter 2* is proposed to be concentrated on the definition of Indigenous Peoples. In this Chapter an attempt will be made to examine the definition of "Indigenous" used in various international law instruments, studies and guidelines. In this connection the study will examine ILO definitions used in *Convention No. 107* of 1957 and *Convention No. 169* of 1989, UN definition used in the study on Indigenous Populations and, the definition used in the *World Bank's Operative Directive* of 1991. The study in this chapter will also examine the definition of "Peoples" and its applicability to Indigenous communities. It is also proposed, in this chapter, to be examined the most controversial issue : can the status of Indigenous Peoples be attributed to the Scheduled Tribes in India.

The contemporary treatment regarding the rights of Indigenous Peoples at international level is the result of activity over the last few decades. This activity has involved, and

substantially been driven by, Indigenous Peoples themselves. Indigenous Peoples have caused to be more objectives of the discussion of their rights and have become real participants in an extensive multilateral dialogue that also has engaged States, non-governmental organisations, and independent experts, a dialogue facilitated by human rights organs of international institutions. This contemporary indigenous rights movement also influences the State Governments to modify their legal system so that to guarantee the rights of Indigenous Peoples in their respective States. Therefore, before examination of Indian system's contemporary treatment of Indigenous Peoples, the *Chapter 3* is proposed to be concentrated on the evolution and recognition of the rights of Indigenous Peoples at international level. This Chapter is to be divided into two parts : Part-I will be dealt with the evolution of the rights, and Part-II with the recognition of the rights. The evolutionary Part of the Chapter is to be examined under four sub-headings : (i) Evolution of Human Rights and Indigenous Peoples (ii) ILO's involvement with the question of the Rights of Indigenous Peoples (iii) UN's involvement with the question of the Rights of Indigenous Peoples, and (iv) the establishment of Working Group and Standard Setting. Part-II of the Chapter is proposed to be concentrated on the following issues : (i) Rights of Indigenous Peoples related to Land and Resources, (ii) Rights of Indigenous Peoples related to Culture, Language and Education, (iii) Rights of Indigenous Peoples related to Self-determination, Autonomy and Self-government. The issue of the Land and Resources is to be examined under six parts : (i) indigenous claims over land, (ii) emotional ties of Indigenous Peoples with their land, (iii) legal and philosophical conflict, (iv) claims over natural resources, (v) restitution of land, and (vi) right of land ownership under international law. The issue of the problem of the rights of Indigenous Peoples related to culture, language and education is to be discussed separately and relevant provisions of international law are to be examined. The third issue, related to right of development, is one of the most controversial issues in the contemporary era. This issue is to be examined under the following heads : (i) adverse impact of development on indigenous peoples, (ii) sustainable development and indigenous peoples, and (iii) right to development of indigenous peoples under international law. The fourth issue related to the self-determination of Indigenous

Peoples, which is to focal point in all discussions on the individual and specific rights of Indigenous Peoples. This issue is to be arranged for examination under the following heads : (i) Indigenous Peoples' claims to self-determination, (ii) principles of self-determination, (iii) external and internal aspects of self-determination, (iv) self-determination and Indigenous Peoples, (v) internal self-determination, autonomy or self-government under international law.

Chapter 4 is proposed to be concentrated on the Indian treatment of Indigenous Peoples. The study in this Chapter is proposed to be devoted on the Constitutional aspects. In India the rights of Indigenous Peoples/Tribals as such have not been recognised. But the Constitution of India has recognised Political Processes for the realisation of the rights of Tribals under the *Fifth* and *Sixth Schedules* to the Constitution. Even though the *Tribes Advisory Councils* and *Autonomous District Councils* were constituted under the *Fifth* and *Sixth Schedules* to the Constitution, the problems of administration of tribal areas in India were recognised much earlier. Therefore, the study in this Chapter is proposed to be concentrated on the system of Governance and Administration of tribals during Pre-British, British and Post-Independent India. The study in this Chapter is to be divided into two parts : Part-I will be dealt with the evolution of political processes, and Part-II, with the recognition of Political Processes. The evolutionary part will examine the development of political processes during Pre-British, British and Constitution making period. The main development of the system of separate administration for tribals had been developed during British period. Therefore, in this part, a number of legislations enacted by the Britishers are to be examined, like, Government of India Acts, 1833 and 1835, Indian Councils Acts, 1833 and 1835, Scheduled Districts Act, 1874, Government of India Acts, 1919 and 1935. To examine the development of Political Processes during British Period, the study will also examine the constitution of *Scheduled Districts*, declaration of *Backward Tracts* and creation of *Excluded* and *Partially Excluded Areas*. The study in this Chapter will also examine the development of Political Processes for Tribals during Constitution making. In this part an examination will be made on the Reports and Recommendations of the *Sub-Committee on Assam*, *Sub-Committee on other than Assam*, Joint Recommendations of these

two Sub-Committees of the Constituent Assembly, factors justifying separate treatment, and *Constituent Assembly* debates. The study will also examine the Constitutional schemes of the *Fifth* and *Sixth Schedules* to the Constitution, comparison between *Fifth* and *Sixth Schedules* to the Constitution, creation of the *Tribes Advisory Councils* and *Tribal Areas Autonomous District Councils*. The study in this Chapter will also examine various case laws on *Sixth Schedule* with respect to the issues, like : (a) Nature of the District Council, (b) Limits and scope of the Legislative Power of the District Council, (c) Competency of the District Council to impose Royalty, (d) Power of the Governor over the District Council, (e) Right of non-tribal to carryon business within District Council Area, (f) Applicability of the Central and State legislations, over the District Council, (g) Applicability of the procedural law, (h) High Court jurisdiction over the District Council Courts and (i) Jurisdiction of the District Council Courts.

As mentioned earlier, under the *Sixth Schedule* to the Constitution of India, nine *Tribal Areas Autonomous District Councils* have been functioning. Among these nine District Councils, two are in Assam (1. North Cachar, 2. Karbi Anglong), three are in Meghalaya (1. Khasi Hills, 2. Jaintia Hills, and 3. Garo Hills), one is in Tripura (Tripura Tribal Areas), and three are in Mizoram (1. Chakma, 2. Mara and 3. Lai). For the purpose of indepth analysis, we have selected only one District Council of Tripura. Therefore, the *Chapter 5* is proposed to be concentrated on the *Tripura Tribal Areas Autonomous District Council*. In 1984, through the 49th Constitutional Amendment, the provisions of the *Sixth Schedule* to the Constitution were extended to the *Tripura Tribal Areas Autonomous District Council*. Since then a new Political Process has been started under the *Sixth Schedule* to the Constitution in Tripura for the protection of tribals and realisation of their rights. The study in this Chapter is proposed to be examined both old and new Political Processes in Tripura. Before examining the New Political Process for the realisation of the rights of tribals in Tripura, the study is proposed to be examined the Old Political Processes for the Protection of Tribals in Tripura. To this end the study is proposed to be examined the : (i) Protection of Tribals during *Rajas* regime, (ii) Protection of Tribals in Post-Independent era. To examine the New Political Process in realisation of the rights of Tribals in Tripura, the study is proposed

to be analytically examined the *Tripura Tribal Areas Autonomous District Council Act, 1979*, with particular reference to structure, power and functions of the District Council, Administration of Justice by the District Council, District Council Fund, extent of State Control over District Council and functioning of the District Council under the Act. The study is also proposed to be examined the *Tripura Tribal Areas Autonomous District Council* (TTAADC) under the *Sixth Schedule to the Constitution of India*. The study in this part is to be arranged under the following heads : (i) 49th Amendment to the Constitution and Tripura Tribal Areas District; (ii) Formation of the TTAADC, its area, population, composition, law making procedure; (iii) Functioning of the TTAADC under the *Sixth Schedule*, its administrative set-up, developmental activities and legislative activities. To find out the role and impact of the new political process, an empirical study is proposed to be conducted. To this end an attempt will be made to find out various developmental activities undertaken by the TTAADC under the *Sixth Schedule* for upliftment of tribal people through it's all departments during last 13 years (1985 to 1998). The empirical study is proposed to be examined the number of developmental schemes undertaken by a particular department, nature and object of the scheme, its expenditure and number of beneficiaries. For the purpose of finding out the legislative achievements of the TTAADC, the empirical study is proposed to be examined the number of enactments have been passed by the TTAADC so far, nature and object of the enactments, date of passing, date of Governor's assent, whether the Governor returned the enactment or not. Finally an attempt will also be made, in this Chapter, to find out the deficiencies of the functioning of the TTAADC.

Chapter 6 is proposed to be concentrated on the concluding observations.

The question of the rights of Indigenous Peoples and realisation of their rights presents a challenge to the disciplines of social science and law as well as to statesmen and planners. Therefore, an attempt will be made in the present study for better understanding of the complex problems which are highly relevant to the prospects of peace and development in the national as well as international societies.

NOTES AND REFERENCES

1. Governments, UN Secretariat employees, and NGO layers often carefully distinguish between "peoples" and "populations" on the theory that designation as a "people" automatically entitles the group so characterised to assert a right to self-determination (i.e. "All peoples have the right of self-determination"). But such a simplistic equation is meaningless in everyday speech.

2. *UN Chronicle*, June 1993 at p. 40.

3. *Convention (No. 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries*. (Adopted on June, 1957, International Labour Conference, 328 UNTS 247, entered into force June 2, 1959), reprinted in UN Martinez Cobo Study - Originally released as UN.Doc. E/CN.4/Sub.2/1982/2/Add. 1 at p. 63. *see* also International Labour Organisation, *International Labour Conventions and Recommendations, 1919-1981* (1982) at p. 632. Several other ILO Conventions and Recommendations (Nos. 50, 58, 59, 64 and 65) do refer to indigenous workers in non-metropolitan territories. *see*, Analytical compilation of existing legal instruments and proposed draft standards relating to indigenous rights, prepared by the secretariat in accordance with sub-commissions Res. 1985/22, UN. Doc. M/HR/86/36/1986.

4. *Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, Adopted by the General Conference of the International Labour Organisation, Geneva, June 27, 1989. Entered into force September 5, 1991. For the text, *see*, S. James Anaya, *Indigenous Peoples in International Law*, Oxford University Press, New York (1996) at p. 193.

5. One of the most comprehensive surveys in recent years of the status of Indigenous Communities in all regions of the World is - UN Sub-Commission on prevention of Discrimination and Protection of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations*. The resulting multivolume work by special Repporteur Jose Martinez Cobo was issued originally as a series of partial reports from 1981 to 1983. It compiled extensive data on "Indigenous Peoples" Worldwide and made a series of findings and recommendations generally supportive of Indigenous Peoples' demands. The Martinez Cobo study became a standard reference for discussion of the subject of Indigenous Peoples within the UN system. The original documents comprising the study are, in order of publication : UN. Doc. E/

CN. 4/476/Adds. 1-6 (1981); E/CN.4/Sub. 2/1982/2/Adds. 1-7 (1982); and E/CN.4/Sub. 2/1983/21/Adds. 1-7 (1983) *see* also UN. Doc. E/CN.4/Sub. 2/1986/7 and Adds. 1-4 (1986).

6. Human Rights Commission Res. 1982/19 (March 10, 1982); E.S.C. Res. 1982/34 May 7, 1982; UN.ESCOR, 1982, UN.Doc.E/1982/82 (1982).

7. The Working Group's final draft was published in an annex to the *Report of the Working Group on Indigenous Populations on its Eleventh Session*, UN.Doc.E/CN.4/Sub. 2/1993/29, Annex. 1 (1993). After the draft was submitted to a technical review, *see*, *Technical Review of the Draft United Nations Declaration on the Rights of Indigenous Peoples*, UN.Doc.E/CN.4 Sub. 2/1994/2 (1994), it was adopted without changes by the full Sub-Commission by its resolution 1994/45 of August 26, 1994. The draft declaration appears in an annex. to the Sub-Commission Resolution as the "Draft United Nations Declaration on the Rights of Indigenous Peoples", UN.Doc.E/CN.41995/2, E/CN.4/Sub. 2/1994/56, at 105(1994). By the same resolution 1994/45 the Sub-Commission submitted the draft declaration to the Commission on Human Rights for its consideration. The Commission, by its resolution 1995/32 of March 3, 1995, decided :

> to establish, as a matter of priority and from within existing overall UN resources, an open - ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled draft "United Nations Declaration on the Rights of Indigenous Peoples" for consideration and adoption by the General Assembly Within the International Decade of the World's Indigenous Peoples.

An annex to the Commission's resolution 1995/32 establishes a procedure for "organisations of indigenous Peoples" to be accredited to participate in the Commission's drafting working group. Although the procedure is designed to provide for greater participation by individuals and groups than that ordinarily allowed in the Commission's Proceedings, it will likely result in a lower level of access to the drafting process than that which indigenous peoples have enjoyed in the Sub-Commission's Working group. The latter working group has allowed virtually any person who attends its meetings to participate in its deliberations, without prior accreditation.

8. Several international human rights instruments are relevant to indigenous peoples, although none considers indigenous rights specifically. These instruments include the Genocide Convention (*Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature Dec. 9, 1948, 78 U.N. T.S. 277), and various UN activities directed against racial discrimination and slavery. For example, country reports under Article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (*International Convention on the Elimination of All Forms of Racial Discrimination*, adopted Dec. 21, 1965, 660 U.N.T.S. 195) frequently refer to a State's treatment of indigenous peoples within its jurisdiction. However, these general human rights offer little help to indigenous people who consider land rights and the right to make choices about their own future as crucial to their survival as distinct peoples. The Working Group on Slavery, established in 1974 by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, has recognised that, "a special problem exists in countries with indigenous populations who might be vulnerable to exploitation, such as debt boundage and other slavery like practices.

9. For the *Reports on Tribal and Excluded Areas, see*, B. Shiva Rao, *The Framing of India's Constitution : Select Documents*. N.M. Tripathi, Bombay (1967) at pp. 683-732.

10. Ibid., at pp. 692-93.

11. By the Constitution (Forty-ninth Amendment) Act, 1984, S.4 (w.e.f. 1-4-1985). Received the assent of the President on September 11, 1984 and Published in the Gazettee of India, Extra., Part II, Section 1, dated September 11, 1984, pp. 1-3.

12. By the Tripura Merger Agreement, 1949. *see*, *White Paper on Indian States*. Ministry of States, Government of India, New Delhi (1950).

13. In 1941 tribals in Tripura were 51.56% but in 1981 they reduced to 29% (Census report, 1981).

CHAPTER - 2

Definition of Indigenous Peoples

The preceding chapter demonstrated that the problems of Indigenous Peoples are related to their rights and its realisation processes. Before examination of any rights of Indigenous Peoples or any process of realisation of any rights, it is necessary to define the terms "Indigenous" and "peoples", and their applicability. This chapter is primarily devoted to the aforesaid aspect.

I. DEFINITION OF "INDIGENOUS"

According to the Oxford dictionary "indigenous" means native, belonging naturally, that of the people regarded as the original inhabitants of an area.[1] Thus indigenous peoples are generally so called because they were living on their lands before settlers came from elsewhere; they are the descendents of those who inhabited a country or a geographic region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means.[2] This meaning conveys the domination over the original inhabitants of an area in the historical chronological sense. In the international context three types of definitions are used. The first definition is found in an international law instrument, the *Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169 of 1989)* of ILO. The second definition is a *Working definition* which has been accepted as an *Operational definition* in the elaboration of an instrument that is international in character. And third definition is found in the World Bank's Operational Directive.

(A) ILO Definition

In 1953, the ILO reviewed various definitions and criterion used by national governments and social scientists and concluded that there was no single universally valid definition of indigenous peoples. The review highlighted the difficulties encountered in formulating a definition in international character. This was sparked off with the publication of the book : *Indigenous Peoples : Living and Working Conditions of Aboriginal Populations in Independent Countries*[3] by ILO. This book, however, proceeds to offer a provisional description of indigenous populations as a purely empirical guide to the identification of *indigenous persons* in independent countries as "Indigenous persons are descendents of the aboriginal population living in a given country at the time of settlement or conquest (or of successive waves of conquest) by some of the ancestors of the non-indigenous groups in whose hands political and economic power at present lies. In general these descendents tend to live more in conformity with the social, economic and cultural institutions which existed before colonization or conquest..... than with the culture of the nation to which they belong".[4] This description served as a basis of the definition that was later included in the ILO *Convention No. 107* of 1957 (Indigenous and Tribal Populations Convention, 1957).[5] The Article 1(1) (b) of the *Convention No. 107* defines "indigenous" as :

> ... members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.

Thus the *Convention No. 107* made the first attempt in defining indigenous populations. According to this definition "indigenous" are tribal or semi-tribal populations of a special category who inhabit a particular geographic region and have a specific historical experience. Now the ILO *Convention No. 107* of 1957 is revised by the *Convention Concerning Indigenous and Tribal*

Peoples in Independent Countries of 1989 (Convention No. 169)[6] which is the only international law instrument concerning indigenous and tribal peoples. However, the definition contained in the *Convention No. 107* has not been abrogated but is supplanted by the definition adopted in ILO *Convention No. 169* of 1989. Article 1(1)(b) of the revised Convention No. 169 defines "indigenous" as follows :

> Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

According to this definition indigenous peoples need not be a special category of tribal peoples and need not be confined to a particular part of the world. They may be peoples who have been affected (obviously in a non-dominant way) during the establishment of the present State boundaries and who retain some of their economic, cultural and political institutions.

(B) UN Definition

Another type of definition has been used in the *UN Study on Discrimination against Indigenous Populations*. In order to carry out the UN study *Special Rapporteur* developed a definition which is known as *Working definition*. After the completion of the study he recommended a comprehensive definition in the "Conclusions, Proposals and Recommendations" of the study for the purpose of international action, which was subsequently accepted as *Operational definition*.

(i) Working definition

In 1965 the UN Human Rights *Sub-Commission on Prevention of Discrimination and Protection of Minorities* decided to initiate a study on racial discrimination. *Mr. Hernan Santa Cruz* was appointed as *Special Rapporteur* to carry out this work and in his final report[7] he included a chapter, entitled, "Measures taken in

connection with the protection of indigenous peoples". The significance of this Report lies in the fact that it led to a number of activities on indigenous populations within the *United Nations* context. The *Special Rapporteur* establishes an operational conceptual framework for the objectives of his study when he says:

> What becomes important for the purposes of the present chapter is that today there may exist in a country groups of descendants of the people who inhabited the area at the time when persons from other parts of the world arrived there, overpowered the natives and reduced them to non-dominant or subjected status[8]... These cases are relevant to this study when at a time of initial contact, these groups were different from each other in many respects, including physical appearance (race, colour) and culture (language, customs), and the native groups continue to lead a distinct existence in the midst of the community which they now belong and are subjected to unsatisfactory treatment at the hands of the presently predominant groups.[9]

The paragraph 1102 of the study of *Mr. Hernan Santa Cruz* states that : "As the chapter on indigenous population is only one part of the overall study of Racial Discrimination, the subject has by no means been exhausted..... For a more thorough analysis of the extent of the problem and the national and international measures needed to solve it, the Special Rapporteur considers what the competent organs of the United Nations..... should make a complete and comprehensive study of this problem". This recommendation was accepted by the Sub-Commission and it was decided to conduct a *Study of the Problem of Discrimination against Indigenous Populations.*

In 1971, the Sub-Commission appointed *Mr. Jose R. Martenez Cobo* as *Special Rapporteur* to make, in terms of the relevant Economic and Social Council resolution, "a complete and comprehensive study... and to suggest the necessary national and international measures for eliminating... discrimination." In order to carry out his study[10] the *Special Rapporteur* in the light of the historical considerations developed a *Working definition* as follows:

> Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcome them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant.[11]

So as to include those isolated or marginal populations which, for some reason, have not been conquered, the *Working definition* is supplemented to read as follows : "Although they have not suffered conquest or colonisation, isolated or marginal population groups existing in the country should also be regarded as covered by the notion of 'indigenous populations' for the following reasons : (a) they are descendants of groups which were in the territory of the country at the time when other groups of different cultures or ethnic origins arrived there; (b) precisely because of their isolation from other segments of the country's population they have presented almost intact the customs and traditions of their ancestors which are similar to those characterised as indigenous; (c) they are, even if only formally, placed under a State structure which incorporates national, social and cultural characteristics alien to theirs".[12]

Thus according to the *Working definition* "indigenous" are those original inhabitant of a territory who for the historical reasons reduced to a non-dominant or isolated or marginal population and, who are socially and culturally distinct from other segments of the predominant population. This definition has been supplanted by the *Operational definition* which is discussed below.

(ii) Operational definition

In the "Conclusions, Proposals and Recommendations" of the Martinez Cobo study it is stated the fact that a definition is

proposed does not mean that the discussion is concluded but that "the following lines are intended.... simply to stimulate reflection and analysis leading to the formulation of more formal proposals for definitions".[13] Accordingly it was proposed that "indigenous populations may.... be defined as follows for the purposes of international action that may be taken affecting their future existence".[14] The study goes onto state that:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sections of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[15]

This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors :

(a) Occupation of ancestral lands, or at least of part of them;

(b) Common ancestry with the original occupants of these lands;

(c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.);

(d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);

(e) Residence in certain parts of the country, or in certain regions of the world;

(f) Other relevant factors.[16]

This definition is supplemented as follows : "On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference".[17]

Thus according to this definition "indigenous" are those who having a historical continuity and consider themselves ethnically distinct from other sections of the society and they are non-dominant group. This definition for the first time included the subjective criteria, such as self-identification as indigenous (group consciousness) and acceptance by the group concerned, with the definition. This definition was accepted as an *Operational definition* in 1982 by the United Nations Human Rights *Sub-Commission on Prevention of Discrimination and Protection of Minorities' Working Group on Indigenous Populations* for the purpose of international action.[18] In 1985, the *United Nations Economic and Social Council* expressed its appreciation and requested its publication and wide dissemination.[19]

(C) World Bank Definition

The third definition is contained in the World Bank's Operational Directive 4.20 of September 1991. The directive provides that the terms "indigenous peoples", "indigenous ethnic minorities", "tribal groups" and "scheduled tribes" describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process. For the purposes of this directive, "indigenous peoples" is the term that will be used to refer to these groups. Within their national constitutions, statutes and relevant legislation, many of the Bank's borrower countries include specific definitional clauses and legal frameworks that provide a preliminary basis for identifying indigenous peoples.[20] Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity. Indigenous peoples are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labour or even

small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics :

(a) a close attachment to ancestral territories and to the natural resources in these areas;

(b) self-identification and identification by others as members of a distinct cultural group;

(c) an indigenous language, often different from the national language;

(d) presence of customary social and political institutions; and

(e) primarily subsistence-oriented production.[21]

According to this definition indigenous peoples are those social groups who have a social and cultural identity distinct from the dominant society. For the identification of indigenous peoples, the definition also provides some criteria, such as, ancestry, language, customary social institution etc.

The above mentioned discussion shows that it is very difficult to arrive at a commonly accepted definition of the term "indigenous" as the concept is emerging. However, the analysis of all definitions contained in principal studies, guidelines and legal instruments reveals that according to the current understanding a number of criteria were identified to determine "indigenousness". These include consideration of both objective and subjective criteria such as ancestry, traditional lands, historical continuity, distinctive cultural aspects including religion, tribal organisation, community membership, dress and livelihood, language, group consciousness (those who feel themselves to be indigenous), residence in certain parts of the country and acceptance by the indigenous community.

II. DEFINITION OF "PEOPLES" AND ITS APPLICABILITY

(A) Definition of "Peoples"

The term "peoples" is widely used in international law, but not defined. Therefore various interpretations seem to be possible. In the drafting stages of the two UN Human Rights Pacts of 1966,[22]

which reiterate in Article 1 "the right of self-determination of peoples", there was a collision between two schools of thought. In the third Committee debate on Article 1, one school of thought attributed the widest possible scope to the right of self-determination; urging that it should always be available to prevent weak peoples being dominated by strong peoples. In the sharp contrast the other school of thought opposed the extension of the right of self-determination to minority groups without consideration for the wishes of the community as a whole. It was unfortunately the latter view which won the day and in the immediate post-war era it became generally accepted that the principle of self-determination could be invoked only for the liberation of colonial peoples in non-metropolitan territories.[23] Both positions were clearly based on theoretical considerations than on political interests. It is, therefore, not surprising that the *travaus preparatories* do not clarify the matter one way or the other and contain no definition of "peoples". Nor has the application of the Pacts to date brought any clarification of the concept of "Peoples" contained in Article 1.

The validation of the right of self-determination of "a people" by way of an individual appeal in the case of *Micmac Tribal Society* v. *Canada*[24] which was decided in 1984 by the *UN Human Rights Committee*, did not bring any clarification in this regard, since the committee ruled solely on the empowerment of the appellant - which it regarded as not given. The question as to whether the *Micmac* are "a people" in the sense of Article 1 of the Convention was not answered. Within the discussion of general comments by the committee on the right of self-determination, the complicated question as regards the definition of the term "Peoples" - was discussed, but not clearly decided. The reason for refraining from this probably lies in the fact that the term "Peoples" can scarcely be filled with any legal substance, it is semi-legal concept.

In general, three common features may be referred to which allegedly characterise the concept of "a people" : common language, common culture, common fate (linguistic community, cultural community, historical community). It therefore seems justifiable to follow the definition of *R. Arzinger* in which "a people"

> is a large group of people linked by one or more specific common features. These common features can be of a national, cultural, linguistic, religions or other nature, common history, economic and social life and even state power as well as common objectives in the struggle for national liberation". And he adds that it must be "a group of people which inhabits a common territory as a compact mass.[25]

The *UN Special Rapporteur* on the right of self-determination, *Cristescu*, uses a more generalised approach, regarding the term "a people" is being adequately described by two characteristics :

(a) by a social entity which has a clear identity and its own characteristics;

(b) by a relationship to a territory which can not be nullified by the forcible expulsion or artificial displacement by other populations.[26]

These attempts at definition make it clear that the concept "peoples" is not objectively definable in international law. Unlike the case of a legally definable population of a State, in which nationality is in most cases acquired without any voluntary act on the part of the individual on the basis of relatively easily determinable criteria, there have been no substantive developments in national or international law of objective criteria for defining a group of people as "a people", distinguishable from other peoples, or of characteristics or processes which determine the membership of individuals in this or that people. However, based on the definitions presented here, the mostly very pronounced sense of belonging together indicates that " a people" is a social entity which has a clear identity and its own characteristics linked by one or more specific common features such as common culture, language, religion or common history, economic and social life etc.

(B) Can Indigenous Communities be regarded as "Peoples"?

The most controversial issue is that : can indigenous communities be recorded as "peoples". Indigenous communities and organisations consider themselves not simply as "populations"

but as "peoples". Many representatives of indigenous peoples demand that the term "peoples" had primarily historical implications for them and use of this term would reflect the notion of collectivity which signified a group of individuals. They repeatedly pointed out that the use of the term "peoples" is necessary to strengthen the recognition of the rights of these groups to their identity and as a fundamental aspect of a changing approach in the direction of greater respect of their cultures and ways of life.[27] However, the use of the term "peoples" has considerable consequences in international law as "peoples" have the right to self-determination. Thus, whether or not the indigenous groups should be regarded as "peoples" is a question of far reaching importance. The common Article 1(1) of the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* affirm that :

> All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[28]

The problem results mainly from the fact that the term "populations" has been used for the indigenous communities by the ILO in the *Convention No. 107* of 1957 and imposed the responsibility upon the Governments" for developing coordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries".[29] The paragraph 3 of the Article 1 of the ILO *Convention No. 107* states that :

> The indigenous and other tribal or semi-tribal populations mentioned in Paragraphs 1 and 2 of this Article are referred to hereinafter as the populations concerned.

The use of the term "populations" does not satisfy the aspiration of the indigenous communities. They prefer the term "peoples" over "populations". This has been repeatedly demanded by the indigenous organisations on the basis that :

> ... the use of this term is necessary to strengthen the recognition of the right of these groups to their identity, and

> as a fundamental aspect of a changing approach in the direction of great respect of their cultures and ways of life.[30]

Precisely these considerations have caused many States in which indigenous communities live to use the term "Peoples" in their legal systems. Thus Article 231 of the 1988 Brazillian Constitution recognises the rights of the *indigenous peoples.* The *Canadian Constitution Act, 1982* states that : "In this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Metis peoples of Canada".[31] In the United States, the *Alaska Native claims Settlement Act, 1971,* the term "peoples" is used.[32]

Building on these developments the term "peoples" has also been used in the ILO's revised *Convention No. 169* of 1989 in preference to the term "populations". The Australian Government, for example, convincingly argued that :

> Any such change would express a reversal of the approach aiming at integration, and convey much more clearly the concept of an independent identity upon which the new version is based. It is significant that many countries already use the expression 'peoples' or an equivalent expression in their domestic legislation on native affairs.[33]

The ILO decided on the use of the term "peoples" in the *Convention No. 169* of 1989 in the face of opposition from some States.[34] The adoption of the text of the Convention was made possible by adding a condition that this did not involve the recognition of the right of self-determination of these peoples. The Paragraph 3 of the Article 1 states that :

> The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

The *UN Draft Declaration on Indigenous Rights* prepared by the *Working Group* also uses the term "peoples", although reservations as to the use of the term "peoples" were expressed by many governments. The representatives of Canada, United States, Japan suggested that if the term "peoples" was eventually

to be retained, the draft declaration should then include a provision equivalent to that contained in the ILO *Convention No. 169*, which made clear that the use of the term "peoples" in that Convention did not imply the right of self-determination as it was understood in international law.[35]

Thus the use of the term "peoples" in the *ILO Convention No. 169* and the *Draft Declaration* did not involve the recognition of the right of self-determination of indigenous peoples. Nevertheless, one can notice today a marked tendency to favour the term indigenous "peoples" over "populations". In this connection the *UN Seminar on the Rights of the Indigenous Communities* in the spring of 1989 stated that :

> There is sill no international consensus on what constitutes the best definition, but there is now a more marked tendency to favour the term "indigenous peoples" over the term "indigenous populations", especially as it reinforces the right to self-determination.[36]

Based on the definitions of "peoples" presented in the previous section (definition of "peoples") and the recent trend to favour the term "indigenous peoples" over the term "indigenous populations", one can conclude that the indigenous communities are to be regarded as "indigenous peoples".

III. CAN THE STATUS OF "INDIGENOUS PEOPLES" BE ATTRIBUTED TO THE "SCHEDULED TRIBES" OF INDIA?

There is a great deal of controversy amongst the anthropologists and sociologists about the criteria for identifying a group of persons or a community as a tribal in India.[37] As a matter of fact, there is no precise definition of the term "tribe" on which there can be general agreement. It is generally applicable to a community or a cluster of communities characterised by a common territory, language and a cultural heritage, on an inferior technological level.[38] According to *Majumdar*, a tribe is "a collection of families or groups of families bearing a common name, members of which occupy the same territory, speak the same language and observe certain taboos regarding marriage, profession or occupation and have developed a well-assessed system of

reciprocity and mutually of obligation.[39] *Amir Hasan* listed the following that a tribal community has generally attributes :

(a) It lives in an isolated area as a distinct group culturally and technically.

(b) It has originated from one of the oldest ethnological sections of the population.

(c) It follows primitive occupations such as gleaning, hunting and gathering of forest product and is, therefore, backward economically and also educationally.

(d) Its members profess a primitive religion, are not always within the Hindu fold in the usual sense. Even when they are treated as Hindus, they do not exactly fit in Hindu casts hierarchy.

(e) It has its own common dialect.

(f) Its members love drinking and dance.

(g) It is largely carnivorous.

(h) Its members dress scantily.[40]

For the protection of the tribals and for the purpose of their administration a number of legislations were enacted even during British period.[41] The first important legislation was *Regulation XIII of 1833* which recognized that administration in advanced areas was not suited to tribal inhabitants and declared Chhota Nagpur as "non-regulated area". *The Government of India Act, 1935*, also introduced a separate administrative measure by dividing tribal areas into "excluded areas" and "partially excluded areas".[42] The principle adopted in the selection of these areas was that where there was an enclave or a definite tract of country inhabited by a compact tribal population, it was classified as an "excluded areas". Where, however, the tribal population was mixed up with the rest of the communities and the tribals were substantial enough in numbers, the area was classified as "partially excluded". Thus during the British period, tribals were administered by the selection of territorial areas. No legislation, however, defined the term "tribe" during British period.

The Constitution of India introduced the term "Scheduled Tribes" and technically defined it. Article 366(25) of the *Constitution of India* defines "Scheduled Tribes" to mean such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. Article 342(1) empowered the President of India to specify the tribals or tribal communities in India. Hence the President has exercised his power vested in him by virtue of this Article in specifying and identifying various tribal communities in India since 1950 till date. As a result number of Constitutional orders have been issued[43] and identified various communities as tribals those who have an ethnic identity; who have retained their traditional cultural identity; who have a distinct language or dialect of their own; who are economically backward and live in seclusion governed by their own social norms and largely having a self-contained economy. The Government of India, however, has adopted the following criteria for identifying a tribe and included it in the Schedule :

(a) Autochthony,

(b) Groupism or a very strong community fellowship, if not descent from a common ancestor or loyality to a common headman or chief,

(c) A principal, if not an exclusive habitant,

(d) A distinctive way of life, primitive or backward by modern standards and apart and aside from the main current of culture,

(e) Economic, political and social backwardness.[44]

Whether, the "Scheduled Tribes" of India are "Indigenous Peoples" or not was debated both in Geneva and India. While India led a concrete attack on the *UN Working Group on Indigenous Populations* in 1984, that was the initiative of an individual representing India in Geneva at that point. In the *Working Group* the representatives of the Government of India have repeatedly stated that the "Scheduled Tribes" of India are not "indigenous peoples".[45] They stated India has long been a "melting pot". They refer to an Indian sociologist as saying that :

> ... in India hardly any of the tribes exist as a separate society and they have all been absorbed, in varying degrees, into the wider society of India. The ongoing process of absorption is not recent but dates back to the most ancient times.[46]

The Indian representative of the *UN Working Group* in 1992 took off his glasses to show the present writer the facial features around his eyes, evidence, he said, of the extent of intermarriage in India. The extent of intermarriage made it impossible, he said to say who was tribal and who was not. In his statement to the Working Group, he said that it was now "very difficult" to come across communities which retain "all their pristine tribal character". The "melting pot" history meant the statement continued, that historians and anthropologists find it very difficult to arrange the various distinct cultural, ethnic and linguistic groups in any chronological order.[47] Again the Indian representative in the *UN Working Group's* meeting in 1993 at Geneva argued that the term "indigenous" was not adequate for his country. Because its entire population had been living on its land for several millennia. All these people were indigenous and any attempt to make a distinction between indigenous and non-indigenous would be artificial. He elaborated further on the efforts made to promote the rights and interests of the scheduled castes and tribes : a National Commission had been constituted to monitor all matters relating to the safeguards provided for those groups. Moreover, poverty alleviation and development programmes had been designed to strengthen the economic and social status of those most vulnerable groups of society.[48]

The permanent mission of India to the *United Nations Office* has a different story. While agreeing to the difference between indigenous peoples and minorities, they asserted that indigenous peoples can not be equated with "Scheduled castes and Scheduled tribes" as they are created by the Constitution for the purpose of positive discrimination to secure for them special privileges and to ensure their accelerated progress on account of backwardness due to historical reasons. By refusing to acknowledge that there are indigenous peoples in India, all that the government seeks to achieve is to ensure that there are no problems for it to discuss in the UN Sub-Committee. The fear of the government to accept the

existence of Indigenous Peoples is that the acceptance would eventually mean ratification of the *Declaration of the Rights of Indigenous Peoples* in future making it much more obligatory for the government of India to fulfil the demands of autonomy as per the Constitution, on the one hand, while on the other more such demands are obviously going to emerge from other areas as the process of internal colonisation of *adivasis* gain momentum in the make of the opening up of the nation for the imperialists.[49]

The debate on whether the "Scheduled Tribes" of India are "indigenous peoples" or not was also occurred in India. The *Indian Council of Indigenous and Tribal Peoples* (ICITP),[50] which was formed in 1987 and affiliated to the *World Council of Indigenous Peoples* - an organisation which received consultative status with the *United Nations Economic and Social Council*, recognised the fact and organised a symposium at New Delhi in April 1992, entitled, "who are the Indigenous Peoples of India?" In the symposium, the ICIPT admitted the fact that the "Scheduled Tribes" (*Adivasis*) of India fall under the UN definition of indigenous peoples. In the symposium, it was further elaborated that the *Adivasi* areas are subject to internal colonialism; *Adivasis* are treated as the subjects of colonisers even by the Government of India, that millions of *Adivasis* are displaced, that there is constitutional crisis in the *Adivasi* areas which has even been acknowledged by the official reports of the Government of India, for example, the 29th Report of the Commission for Scheduled Castes and Scheduled Tribes, 1988 where there is even a section titled "Constitutional cricis in Tribal Areas".[51]

In 1994, the Indian participants from mainland India, of the *United Nations Workshops on Indigenous and Tribal Peoples' Struggle for Right to Self-determination and Self-government*, held in New Delhi also asserted that *Adivasis* of India are basically the Indigenous/Tribal peoples, have referred to themselves as *Adivasis*, a term which includes the concept of indigenous/tribal.[52] The workshop also recognised that :

> ... many indigenous/tribal communities are no longer isolated from the so-called mainstream. Their lands and resources have been taken over by outsiders and these peoples have been completely marginalized in

> their own ancestral homeland. The case of Tripura in north-east India is unique where, within the last 45 years, the Tripura/Kokborok indigenous peoples have been reduced to a minority by a constant influx of outsiders from India and erstwhile East Pakistan, now Bangladesh.[53]

The participants, however, felt that the United Nations definition of indigenous peoples relies too much on the Western experience and, therefore, recognises only those peoples as indigenous whose foreparents were conquerred by foreign invaders. The workshops, therefore, developed the following criteria for defining the *adivasi*/indigenous/tribal people in India:

(a) Relative geographic isolation of the community;

(b) Reliance on forest, ancestral land and water bodies within the territory of the community for food and their necessities;

(c) A distinctive culture which is community oriented and gives primary to nature;

(d) Relative freedom of women within their society;

(e) Absence of a division of labour and caste system;

(f) Lack of food taboos.[54]

The above mentioned views of the *Indian Council of Indigenous and Tribal Peoples*, the Indian Participants of the *United Nations Workshops on Indigenous and Tribal Peoples' Struggle for Right to Self-determination and Self-government*, and the criteria adopted by the Government of India for identifying a tribe made it clear that "Scheduled Tribes" in India falls very well within the scope of the current understanding of the term "indigenous peoples". Moreover, India is a party to the International Labour Organisation *Convention No. 107* of 1957[55] on Indigenous and Tribal Populations. India participated in the drafting of the Convention and supported the document at the early stages when it only used the term "indigenous". The India had also made an official acknowledgement at the international level by being one of the first signatories of the ILO *Convention No. 107* of 1957 on the protection of Indigenous and Tribal Populations and its accompanying recommendation No. 104. This remains the only

international instrument adopted by any international organisation for the protection of indigenous and tribal populations till date. The India was among the first few countries to ratify this in 1958,[56] although the revised *Convention No. 169* of 1989 (it is the revised *Convention No. 107* of 1957) yet to be ratified by India. Furthermore, in 1991 the World Bank on its own declared that in India the term "indigenous peoples" means "Scheduled Tribes".[57] Thus the status of "indigenous peoples" is to be attributed to the "Scheduled Tribes" of India.

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3. International Labour Office. *Indigenous Peoples : Living and Working Conditions of Aboriginal Populations in Independent Countries.* Geneva, 1953.

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5. Convention No. 107, Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (Indigenous and Tribal Populations Convention, 1957) was adopted by the International Labour Conference at its 48th Session at Geneva on 26 June 1957. For the text of this Convention, *see,* ILO. *Conventions and Recommendations adopted by the International Labour Conference 1919-1966.* Geneva (1966). *see* also Martinez Cobo Report, UN Doc. E/CN.4/Sub.2/1982/2/Add. 1, pp. 63-72.

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28. Supra note 22.

29. Paragraph 1 of the Article 2 of the *ILO Convention No. 107* of 1957.

30. Hans-Joachim Heintez. op. cit. at p. 42.

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32. In 1988 the USA declared to the ILO : "the expression 'peoples' would be an exact description of the tribal governments recognized by the Federal Government of United States". For the analysis of the Alaska Native Claims Settlement Act, 1971, *see*, Martha Hirschfield, "The Alaska Native Claims Settlement Act : Tribal Sovereignty and the Corporate Form", *Yale Law Journal*, 101(6) April 1992 : 1331-1353.

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38. Melville Jacobs and Bernhard J. Stern. *General Anthropology*, Barnes and Nobel, New York, 1964, at p. 41.

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41. Some important legislations were : *the Bengal Regulation XIII of 1833, the Scheduled Districts Act of 1873, the Government of India Acts, 1919 and 1935.*

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43. These Constitutional Orders are the Constitution (Scheduled Tribes) Order, 1950 (C.O. 22); the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 (C.O. 33); the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 (C.O. 58); the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962 (C.O. 65); the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 (C.O. 78); the Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 (C.O. 82); the Constitution (Nagaland) Scheduled Tribes Order, 1970 (C.O. 88); and the Constitution (Sikkim) Scheduled Tribes Order, 1978 (C.O. 111), the Constitution (Scheduled Tribes) Order (Amendment) Act 1991; the Constitution (Scheduled Tribes) Order (Second Amendment) Act, 1991.

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46. Ibid.

47. Ibid., *Report on its Tenth Session*. UN. Doc./E/CN.4/Sub.2/1992/33 at p. 13.

48. Ibid., *Report on its Eleventh Session*. UN. Doc. E/CN.4/Sub.2/1993/29 at p. 22.

49. C.R. Bijay, "Emergence of the Submerged : Indigenous People at UN". *EPW* 28 (1992) at p. 1360.

50. With the initiative taken primarily by the activists of the Jharkhand Movement, the ICIPT was formed in 1987. The ICIPT has been a regular invitee in the meetings of the Working Group on Indigenous Populations since its formation. *see*. Douglas Sanders, "Indigenous Peoples on the International Stage", *SA*, 43 (1993) p. 6.

51. C.R. Bijoy. "Emergence of the Submerge". op. cit. at p. 1359.

52. Summary of Resolutions of Workshop on Indigenous and Tribal Peoples' Struggle for Right of Self-determination and Self-government in India. UN. Doc. E/CN.4/Sub.2/AC.4/1994/4/Add. 1 at Para. 8.

53. Ibid., Para. 5.

54. Ibid., Paras. 3 and 10.

55. ILO *Convention No. 107* Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, 1957. For the text of the convention, *see*, International Labour Organisation. *International Labour Conventions and Recommendations, 1919-1981*, at p. 858; *see* also UN. Doc. E/CN-4/Sub. 2/1982/2/Add. 1 at p. 63.

56. Altogether 27 States have ratified the Convention No. 107 of 1957. These States are Angola, Argentina, Bangladesh, Belgium, Bolivia, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Egypt, El Salvador, Ghana, Guinea-Bissan, Haiti, India, Iraq, Malavia, Mexico, Pakistan, Panama, Paraguay, Peru, Portugal, Syria and Tunisia. The convention was adopted by ILO on 26 June 1957 and came into force on June 2, 1957.

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CHAPTER - 3

Evolution and Recognition of The Rights of Indigenous Peoples at International level

In the previous chapter an attempt was made to discuss the meaning of the words "Indigenous" and "Peoples". It has emerged that the term "Indigenous Peoples" has been well recognised at international level and at the national level this term can be attributed to the "Scheduled Tribes" in India. Before a detailed study is undertaken to examine the Indian position regarding the rights of Indigenous Peoples and realisation of their rights, it is necessary to examine in detail the evolutionary perspective of various rights of Indigenous Peoples and their recognised rights at International level. This chapter is primarily devoted to the aforesaid aspect.

I. EVOLUTION OF THE RIGHTS OF INDIGENOUS PEOPLES AT INTERNATIONAL LEVEL

(A) Evolution of Human Rights and Indigenous Peoples

International law evolved as a system of rules governing the conduct of inter-state relations and traditionally did not concern itself with matters falling within the domestic jurisdiction of individual States, such as the way States treated their own nationals and others living within their borders[1]. This distinction is becoming harder to sustain as international law evolves to suit an increasingly complex, and interdependent world. In particular, a State's treatment of its own nationals has become a legitimate subject of international concern since World War II. The

proliferation of international conventions on human rights[2] that based on the principles delineated in the *United Nations Charter*[3] and the *Universal Declaration of Human Rights*[4] has resulted in a body of international legal norms that addresses what usually is an area of domestic jurisdiction.

Individual rights comprise the majority of what are accepted today as human rights. Even when dealing with rights that presuppose the existence of a group to exercise them, the language used in human rights instruments tends to be individualistic[5]. One collective right is that of all individuals to self-determination[6], but its application outside the context of decolonization remains highly problematic, with no accepted application to indigenous peoples.

As a group, indigenous peoples have no special rights under current international law. Individually, they have the rights available to all individuals. Many of these rights, such as the rights of non-discrimination, religions freedom, freedom to speak one's native language, and maintaining one's cultural traditions are relevant directly to the situation of indigenous peoples[7]. These general human rights, however, offer little help to indigenous peoples who consider land rights and the right to make choices about their own future as crucial to their survival as distinct peoples.

The fairly vague concept of distinct indigenous rights has its foundations in 16th and 17th century interpretations of international law, and was incorporated and further developed in British colonial policy and has had its fullest expression in the case law of the United States. The degree to which indigenous rights are acknowledged, denied, ignored, or deliberately extinguished in particular State always has been determined by the individual State as a matter of domestic jurisdiction. Accordingly, there is a dearth of customary international legal norms on the rights of indigenous peoples. In the *United Nations* and *International Labour Organisation*, it is recognised that the establishment and protection of the rights of indigenous peoples are essential part of human rights and a legitimate concern of the international community. These two organisations are active in the setting and implementing of standards designed to ensure respect for existing rights of indigenous peoples and the adoption of additional rights.

(B) ILO's Involvement with the Question of the Rights of Indigenous Peoples

From its creation in 1919, the *International Labour Organisation* (ILO) has defended the social and economic rights of groups whose customs, traditions, institutions or language set them apart from other sections of national communities. Thus ILO has been a significant exception among international organisations in addressing issues related to indigenous peoples. As early as 1921, the ILO carried out a series of studies on indigenous workers in the independent countries. In 1926, the Governing body of ILO set up a *Committee of Experts on Native Labour* and whose work resulted in the adoption of a series of international labour conventions and recommendations concerning forced labour and recruitment practices of indigenous groups[8]. In early 1950s, the ILO gave considerable attention to the issue of the rights of indigenous peoples. A *Second Committee of Experts on Indigenous Labour* first met in 1951. It encouraged States to extend legislative provisions to all segments of their population, including indigenous communities, and called for improved education, vocational training, social security, and protection in the field of labour for indigenous peoples[9]. Finally, in 1953, the ILO published a comprehensive reference book, entitled, *Indigenous Peoples : Living and Working Conditions of Aboriginal Populations in Independent Countries*,[10] which provided a survey on indigenous populations throughout the world and a summary of national and international action to aid these groups. The study stated that indigenous peoples all over the world had in common :

> Considerable economic backwardness by comparison with the remainder of the population.... inequality of opportunity and the survival of anachronistic economic and land tenure systems that prevent indigenous peoples from fully developing their production and consumption and contribute to perpetuating their interior social status. As a rule, the living standard of the aboriginal populations in independent countries in extremely low, and in the great majority of cases is considerably lower than that of the most needy layers of the non-indigenous population. The aboriginal groups in many regions stagnate in conditions of economic destitution.[11]

Chiefly responding to reports of labour discrimination in Latin America, the ILO adopted *Convention No. 107 Concerning Indigenous and Tribal Populations*, in 1957[12]. This remains the only international legal instrument specifically created to protect the rights of indigenous and tribal populations. This convention came into force on June 2, 1956, India among the first few countries to ratify this in 1958. Altogether 27 States have ratified[13] this till date, 14 of them in Latin America and the Caribbean. The Convention starts from the promise that the social, economic or cultural situation of indigenous peoples "hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population"[14] and from "sharing fully in the progress of the national community of which they form part"[15]. Emphasizing the "protection and integration"[16] of indigenous peoples, the Convention obliges States parties to develop "co-ordinated and systematic action for their progressive integration"[17] through "collaboration" rather than "force or coercion"[18]. Article 2 of the Convention provides that :

> Governments shall have the primary responsibility for developing co-ordinated responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries. ... Recourse to force or coercion as a means of promoting the integration of these populations into the national community shall be excluded.

The Convention No. 107 does not merely recognise "the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy". It also recognises their right to be compensated in money or in kind for lands appropriated by the national government for development purposes. Moreover, *Convention No. 107* makes the first attempt at defining indigenous populations, referring to "their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization" and their tendency to "live more in conformity with their own social, economic and cultural institutions".

The Convention No. 107, however, reflects the common view of 1940s and 1950s in prompting assimilation or integration and non-discrimination[19]. After the adoption of the Convention, the World has changed and the Convention has been overtaken by events, especially decolonization. Hence, the Convention became out dated and faced criticism which led the ILO to revise the Convention[20]. In 1986, the ILO convened a *Meeting of Experts* which included representations of the *World Council of Indigenous Peoples*, a loose confederation of indigenous groups from throughout the World. The meeting recommended the revision of *Convention No. 107*, concluding that :

> the integrationist language of Convention No. 107 is outdated, and that the application of this principle is destructive in the modern world. In 1956 and 1957, when Convention No. 107 was being discussed, it was felt that integration into the dominant national society offered the best chance for these groups to be part of the development process of the countries in which they live. This had, however, resulted in a number of undesirable consequences. It had become a destructive concept, in part at least because of the way it was understood by governments. In practice it had become a concept which meant the extinction of ways of life which are different from that of the dominant society. The inclusion of this idea in the text of the Convention has also impeded indigenous and tribal peoples from taking full advantage of the strong protections offered in some parts of the Convention, because of the distrust its use has created among them. In this regard, it was recalled that the Sub-Commission's Special Rapporteur had stressed in his study ... the necessity of adopting an approach which took account of the claims of indigenous populations. In his opinion, the policies of pluralism, self-sufficiency, self-management and ethno-development appeared to be those which would give indigenous populations the best possibilities and means of participating directly in the formulation and implementation of official policies.[21]

The discussion on the revision of the convention proceeded at the 1988 and 1989 sessions of the International Labour Conference, the highest decision-making body of the ILO. In 1989 the Seventy-Sixth Working Conference of ILO voted for a partial revision of the *Convention No. 107* (now *Convention No. 169 of 1989*). This initiative and the debate surrounding it once again dramatically illustrated a series of problems connected with the rights of indigenous and tribal peoples in independent countries. The ILO action reflects growing international awareness of the special character and assertiveness of indigenous organisations as well as the increasing recognition of collective human rights in international law. This new instrument eliminates the paternalistic and assimilationist approaches to indigenous peoples. *Convention No. 169* will serve as a basis for ILO implementation and technical assistance activities for indigenous peoples in the years to come.

The Convention No. 169, does offer the prospect of binding international rules on how ratifying States treat their indigenous inhabitants. The ILO itself regards *Convention No. 169* as an effort to raise the minimum standards for governments' dealings with their indigenous peoples. The *Convention No. 169* entered into force in 1991. Only ten Countries-Brazil, Mexico, Norway, Bolivia, Colombia, Denmark, Costarica, Honduras, Paraguay and Peru have ratified this convention till 1997. It is uncertain, however, whether a revision will attract substantially more ratifications than did the original. How a revision will fit within the standard-setting efforts of the *UN Working Group* on *Indigenous Populations* (hereinafter referred to as *UN Working Group/Working Group*) is also not clear. No matter how many governments ratify *Convention No. 169,* its value as a guarantee of indigenous rights is suspect if it is widely opposed by indigenous peoples. There have been indications that this may be the case. For example, at the seventh session of the *UN Working Group* in August 1989, the indigenous preparatory meeting submitted a resolution strongly condemning the revised ILO Convention, calling on States not to ratify it and demanding that its terms be disregarded in the process of developing a *Draft Declaration*. At the same session of *UN Working Group* in 1989 many indigenous representatives expressed a lack of confidence in the process which had led to the adoption of the revised ILO *Convention No. 169* on the basis that there had been

much bargaining, many compromises reached and a lack of adequate consultation with indigenous peoples in drawing up the text.[22] They also condemned several Articles of the *Convention No. 169*. First, they cite Article 1(3), which states that "the use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law", thus side-stepping the contentious issue of whether indigenous peoples are entitled to self-determination. Second, Article 6, which only imposes an obligation to consult indigenous peoples "with the objective of achieving agreement or consent" on measures that would affect them directly, rather than imposing a clear obligation to secure their consent before proceeding with such measures. Third, Article 8(2), which states that indigenous peoples have the right to keep their own customs and institutions "where these are not incompatible with fundamental rights as defined by the national legal system". This provision provides an invitation to further assimilative measures by governments. Finally, they claim that the provisions concerning indigenous land and resource rights generally are inadequate. Other indigenous representatives, at the same session of *UN Working Group* in 1989, saw the new *Convention No. 169* as a welcome addition to international human rights law and expressed confidence in the ILO implementation machinery and endorsed ratification by States. In this way some indigenous representatives continued to criticize the ILO *Convention No. 169* and others supported it and endorsed ratification by all States with indigenous populations. The Report of the *Working Group* states that :

> Several indigenous observers expressed disappointment with the revised ILO Convention in as much as it did not fully and adequately respect indigenous demands. The Convention was challenged as paternalistic and oriented towards the interests of Governments. It did not, it was said, sufficiently require Governments to recognise indigenous rights to territory, land and resources and, furthermore, it did not properly recognise the crucial requirements for indigenous consent. Other indigenous representatives expressed support for the revised Convention and for the efforts of the ILO to promote and protect indigenous rights. They

> endorsed ratification by all States which have indigenous peoples within their borders and felt that respect for the Convention's provisions would improve the situation of indigenous peoples in most countries.[23]

(C) UN's Involvement with the Question of the Rights of Indigenous Peoples

Since its establishment, the *United Nations* (UN) has nevertheless, as part of its overall human rights work, addressed some situations which affected indigenous peoples. In 1948, Bolivian Government proposed to establish a Sub-commission of the UN Social Commission to study the social problems of aboriginal population of the American continent.[24] As a result, the UN system first addressed itself formally to indigenous issues in 1949, when the *General Assembly* invited the Sub-commission to study the condition of indigenous Americans in the hope that the material and cultural development of these populations would result in a more profitable utilisation of the resources of America to the advantage of the world.[25] A number of countries, including the United States, Brazil, Chile, France, Peru and Venezuela objected to this and a subsequent resolution effectively barred any such studies unless requested by affected member States. No requests were for the coming, and thus initiative was the last taken by the UN concerning the general problems of indigenous peoples for two decades.[26]

In 1965 the *UN Sub-Commission on Prevention of Discrimination and Protection of Minorities* decided to initiate a study on racial discrimination. *Mr. Hernan Santa Cruz* was appointed as *Special Rapporteur* to carry out this work and his final report he included a chapter entitled : "Measures taken in connection with the protection of indigenous peoples".[27] The significance of this report lies in the fact that it led to a number of activities on indigenous populations within *United Nations* context. The report recommended for a complete and comprehensive study of the problem of indigenous populations as follows :

> As the chapter on indigenous populations is only one part of the overall study of Racial Discrimination, the subject has by no means been exhausted ... For a more

> thorough analysis of the extent of the problem and the national and international measures needed to solve it, the *Special Rapporteur* considers what the competent organs of the *United Nations*..... should make a complete and comprehensive study of this problem.[28]

A turning point came in 1970 when this recommendation was accepted by the *UN Sub-Commission on Prevention of Discrimination and Protection of Minorities* and it was decided to conduct a comprehensive study of the *problem of discrimination against indigenous populations*. In 1971, the Sub-Commission appointed *Mr. Jose R. Martinez Cobo* as *Special Rapporteur* to make, in terms of the relevant Economic and Social Council resolution, "a complete and comprehensive study.... and to suggest the necessary national and international measures for eliminating..... discrimination" [29] His final report of the study[30] was submitted to the Sub-Commission during the years 1981-1984. The final part of the report, which contained its *Conclusions, Proposals and Recommendations*,[31] has already been accepted as authoritative milestone in UN consideration of the human rights problems facing by indigenous peoples. The Sub-Commission called it "a reference work of definitive usefulness"[32] and directed the *Working Group* "to rely on it in setting standards".[33] This part of the report was warmly received by members of the *Working Group* as well. The *Special Rapporteur* addressed a wide range of human rights issues. They include a definition of indigenous peoples, the role of inter-governmental and non-governmental organisations, the elimination of discrimination, basic human rights principles, as well as special areas of action in fields such as health, housing, education, language, culture, social and legal institutions, employment, land, political rights, religious rights and practices and equality in the administration of justice. The report concludes that existing human rights standards are not fully applied to indigenous peoples and, moreover, are not wholly adequate to the task. The *Special Rapporteur* says :

> The content of this study demonstrates clearly that the principles proclaimed in existing international instruments concerning human rights and fundamental freedoms are not fully applied.[34] It is

> also clear that the provisions contained in the instruments in question are not wholly adequate for the recognition and protection of the specific rights of indigenous populations as such within the overall societies of the countries in which they, now live".[35]

Still more significant the point which the *Special Rapporteur* raised was that "self-determination, in its many forms, must be recognised as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future".[36] In the scope and essence of the indigenous self-determination the report states that :

> .....the right to self-determination exists at various levels and includes economic, social, cultural and political factors. In essence, it constitutes the exercise of free choice by indigenous peoples, who must, to a large extent, create the specific content of this principle, in both its internal and external expressions, which do not necessarily include the right to secede from the State in which they live and to set themselves up as sovereign entities. This right may in fact be expressed in various forms of autonomy within the State, including the individual and collective right to be different and to be considered different, as recognised in the statement on Race and Racial Prejudice adopted by UNESCO in 1978.[37]

In addition, the report concludes that indigenous peoples have a natural and inalienable right to keep the territories they possess and to claim the lands which have been taken from them"[38] and it proposes detailed standards for the reconciliation of land claims. Consequently, a declaration leading to a convention is required.

The most significant UN activity regarding "indigenous peoples" is that eleven organisations of indigenous peoples have received consultative status with the *United Nations Economic and Social Council* (ECOSOC) in December 1989. Consultative status entitles them to attend and contribute to a wide range of international and inter-governmental conferences in particular to the *United Nations Working Group on Indigenous Populations*. These

organisations are : Four Directions Council, Grand Council of the Crees (Quebee), Indian Council of South America, Indian Law Resource Centre, Indigenous World Association, International Indian Treaty Council, International Organisation of Indigenous Resources Development, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Services Secretariat, National Indian Youth Council, and World Council of Indigenous peoples. In addition, hundreds of representatives of other indigenous peoples and their organisations participate in *United Nations* meetings, in particular those of the *Working Group on Indigenous Populations. Non-governmental Organisations* (NGOs) with general human rights interests as well as support for indigenous peoples' causes actively contribute to work in the field of indigenous peoples' rights.[39]

Non-governmental activities on the one hand and inter-governmental initiative on the other, have had a mutually reinforcing effect. In this connection three international conferences have drawn attention to indigenous rights. The *International NGO Conference on Discrimination against Indigenous Peoples of the Americans* held at Geneva in 1977, was the first to attract indigenous representatives. Its final report emphasized that "the right of indigenous peoples and nations to have authority over their own affairs" and it set forth a draft declaration of principles calling for the recognition of indigenous peoples as subjects of international law.[40] *The World Conference to Combat Racism and Racial Discrimination*, which was held at Geneva in 1978, "endorsed the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language and also recognised the special relationship of indigenous peoples to their land and stressed that their land, land rights and natural resources should not be taken away from them".[41] Finally, a *International NGO Conference on Indigenous Peoples and the Land*, was convened at Geneva in 1981. That conference called for the establishment of a *United Nations Working Group on indigenous peoples* so that "indigenous nations and peoples could submit their complaints and make their demands known":[42]

(D) Establishment of Working Group and Standard Setting

Following the lead of NGO conferences and *Martinez Cobo* study the *UN Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities* proposed[43] to its superior

bodies the authorisation for the creation of a *Working Group on Indigenous Populations* (hereinafter referred to as Working Group) in 1981. The *Commission on Human Rights*[44] and the *Economic and Social Council* (ECOSOC)[45] accepted this proposal in 1982 and since then the *Working Group* has taken place annually (except in 1986). The *Working Group* is composed of five members[46] one from each geopolitical region of the world, one independent experts. It meets for one week immediate before the annual session of the Sub-Commission in Geneva, Switzerland. The original mandate of the Working Group consisted of two parts :

1. to review national developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous peoples, and

2. to develop international standards concerning the rights of indigenous peoples, taking account of both the similarities and differences in their situations and aspirations throughout the world.[47]

The *Working Group* has become the primary focus of international activities by both governmental and non-governmental organisations concerned with indigenous peoples. At its first session, the *Working Group* took the unprecedented step of allowing oral and written interventions from all indigenous organisations which wished to participate in its work, not limiting such participation to those with formal consultative status. Approximately 370 persons, including representatives from over 50 indigenous organisations and observers from 27 countries, took part in its fifth session in 1987.[48] The interest generated by the activities of the *Working Group* and in the subject of indigenous peoples' rights in general is indicated by the number of people who took part. Some 380 to 400 persons attended the 1988 and 1989 sessions. They included observers from over 30 Governments and hundreds of indigenous peoples' and non-governmental organisations, as well as scholars and academies.[49] The *Working Group* has become one of the largest *United Nations* forums in the field of human rights.

As a result of this wide participation, the *Working Group* has provided a meaningful forum for the exchange of proposals regarding indigenous rights and for the exposition of indigenous

reality throughout the world. The early sessions of the *Working Group* were devoted largely to collecting data, which consisted of information from indigenous and other NGOs about the actual situation of indigenous peoples under assault from dominant societies in many parts of the world. The most common violations reported were arbitrary arrests, torture and killings; dispossession of indigenous lands, either through settlement or pursuant to State defined development projects, such as hydro-electric projects or large-scale mining or agricultural projects; and the attempted destruction of indigenous culture and identity through, *inter alia*, desceration or destruction of religious sites. The information submitted to the *Working Group* also made frequent references to the economic gap between indigenous and dominant populations, as illustrated by insufficient or unequal social services provided by governments and the exploitation of natural resources on indigenous lands without obtaining consent of the indigenous peoples or providing adequate compensation to them.[50]

Although the review of developments related to the human rights of indigenous peoples continues to form an important segment of the *Working Group's* activity, since 1985 the *Working Group* puts special emphasis on the second part of its mandate : the evolution of international standards concerning the rights of indigenous peoples. As a matter of fact, in the early stage of the *Working Group*, no one was quite certain how the second part of its mandate would be pursued, i.e., whether the *Working Group* was to draft an instrument for consideration by the General Assembly, or was simply to develop a body of principles for its won use as a data-gathering body. In 1984, however, Australia, Canada and several indigenous organisations expressed concern that the *Working Group* was merely compiling data uncritically. The Sub-Commission thereupon requested "the Working Group henceforth to focus its attention on the preparation of standards on the rights of indigenous populations", and accordingly "to consider in 1985, the drafting of a body of principles on indigenous rights based on relevant national legislation, international instruments and other juridical criteria".[51] The Commission approved this new emphasis of the *Working Group's* charge and urged the group "to intensify its efforts to develop international standards based on a continued and comprehensive review of developments..... and of the

situations and aspirations of indigenous populations throughout the World".[52] A further refinement was made in 1985, when the Sub-Commission endorsed the plan of action adopted by the *Working Group* for its further work..... as well as its decision to emphasis in its forthcoming sessions the part of its mandate related to standard-setting activities, with the aim of producting, in due course, a draft declaration on indigenous rights which may be proclaimed by the *General Assembly*.[53]

As a result, the *Working Group* on its Fourth Session in 1985 decided to prepare a *Draft Declaration on the Rights Indigenous Peoples*. Through its various sessions the *Working Group* has prepared a *Draft Declaration* which was completed on its eleventh session in 1994.[54] The Draft was adopted by the Sub-Commission in 1994 and presently under consideration of the UN *Commission of Human Rights*. The Draft is expected to be submitted to the ECOSOC soon and thereafter to be submitted for proclamation by the *UN General Assembly*. The Draft is divided into nine parts. Part-I deals with the general universal human rights, Part-II guarantees the protection against genocide and ethnocide, Part-III includes the distinct ethnic rights, Part-IV devoted with the rights related to language and education, Part-V includes economic and social rights, Part-VI deals with the rights of land and resources including ownership, possession and environmental protection, Part-VII includes self-determination, autonomy and self-government, Part-VIII prescribes procedures for resolving conflicts or disputes between States and indigenous peoples and finally Part-IX devoted to the minimum standards for the survival of the indigenous peoples. Although the Draft is presently under the consideration of the *UN Commission on Human Rights*, there are still many gaps which need to be filled. In this context following recommendations are worth considering :

1. The Draft should be worded in such a way that it is not viewed as a threat to governments or a source of fiction, but as an international instrument which would eliminate conflicts in the future.

2. The Draft should reflect Indigenous Peoples' wishes in the best possible way.

3. It is also desirable that the Draft is made as flexible as possible. A flexible text is needed to take into account the different historical and social contexts in which Indigenous Peoples live.

4. All rights stated in the Draft should be available without discrimination, to both male and female persons. A provision to this effect should be included in the Draft.

5. The Draft in the present form does not contain any implementation mechanism. This omission need to be rectified.

6. The rights of Indigenous workers should be included in the Draft.

7. The Draft should clearly recognise the right of Indigenous Peoples to protect against genocide.

8. The right of Indigenous Peoples to have access to health services should also be included in the Draft.

Adoption of the revised *ILO Convention No. 169* of 1989 (which is the revised ILO *Convention No. 107* of 1957) and the preparation of the *UN Draft Declaration on Indigenous Rights* (which is under the process of adoption) have created a new awareness about the claims and entitlements of rights of the indigenous peoples which may be categorised as follows :

(a) Rights of Indigenous Peoples related to Land and Resources.

(b) Rights of Indigenous Peoples related to Culture, Language and Education.

(c) Rights of Indigenous Peoples related to Development.

(d) Rights of Indigenous Peoples related to Self-determination, Autonomy and Self-government.

These rights need detailed deliberation.[55]

II. INTERNATIONALLY RECOGNISED RIGHTS OF INDIGENOUS PEOPLES

(A) Rights of Indigenous Peoples Related to Land and Resources

(i) Indigenous claims over Land

A central element of the demand of the indigenous peoples is the *Right to their Traditional Land and its Resources.* Though there is no legal system of the World that would explicitly exclude indigenous peoples from enjoying the right of ownership,[56] indigenous Organisations consider that the existing legal protection are too inadequate and, therefore, demand special protection for their lands, their land rights and their resources. Indigenous peoples are aware of the fact that unless they are able to retain control over their land and natural resources, their survival as identifiable, distinct societies and cultures are seriously endangered, because their lands and resources are often taken over by outsiders and these people have been completely marginalised in their own ancestral homeland. This stems mainly from the way in which these problem arose : "Indigenous peoples became minorities or lost control over their traditional lands as a result of (a) colonialism, with the creation of new national populations and new States...., or (b) the expansion of neighbouring States. ... as a processes often not described as colonialism."[57] As an example, case of Tripura in North-east India can be cited where, within the last 45 years Tripuri/Kokborok indigenous peoples have been reduced to a minority by a constant influx of outsiders from other parts of India or erstwhile East Pakistan, now Bangladesh.[58] This type of situation, prevalent in the world over, led the *World Council of Indigenous Peoples* (WCIP) to submit the following principles to the UN *Working Group on Indigenous Populations* on its fourth Session in 1985[59] :

(a) Indigenous peoples shall have exclusive rights to their traditional lands and its resources;

(b) Where the lands and resources of the indigenous peoples have been taken away without their free and informed consent such lands and resources shall be returned.

(c) The land rights of an indigenous people include surface and subsurface rights, full rights to interior and coastal waters

and rights to adequate and exclusive coastal economic zones within the limits of international law.

(d) No action or course of conduct may be undertaken which, directly or indirectly, may result in the destruction of land, air, water, sea ice, wildlife, habitat or natural resources without the fee and informed consent of the indigenous peoples affected.

(ii) Emotional ties of Indigenous Peoples with their Land

The land problem is complicated and not only by the obvious injustices in the exploitation of resources, but also by the deep emotional ties of the indigenous peoples to their land. This complicated problem cannot be fully appropriated without understanding the spiritual link between indigenous peoples and their *Mother Earth.* In indigenous peoples' perception land is a sacred, economic and social and cultural space in which human society lives, reproduces and on which it is projected in culture and material terms. It is the space where the ancestors are buried, where the gods and spirits live and in which their myths and legends are rooted. It has also been said that :

> For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples an *Mother Earth*, and their land, has a great many deep-seated implications. Their Land is not a commodity which can be acquired, but a material element to be enjoyed freely.[60]

The sacred nature of land can also be understood by the statement made by the *Great Chief Seattle* In 1885, when the Government of United States of America, requested the Dnwamish people to give up land to the white settlers in exchange for which they would receive as a "gift" from the Government a "reservation", the *Great Chief* said:

> My people venerate each corner of this land, each shining pine needle, each sandy beach, each wreath of mist in the dark woods, each glade, each humming insact; in the thought and practice of my people, all these things are sacred. The sap rising in the tree

> carries the memory of the red man..... Our dead never forget this marvellous land because it is the mother of the red man. We are part of the land and it is part of us. The sweet smelling flowers are our sisters; the deer, the horse and the great eagle are our brothers... The rocky heights, the lush prairies, the body heat of the pony- and of man- all are part of the same family.... The sparkling water which runs in the gullies and in the rivers is not only water but also the blood of our ancestors....[61]

Thus, indigenous peoples' culture is attached with their land, they are to a large extent agriculturists, hunters or gatherers. For them the land is not only an economic factor of production, it is the basis of cultural and social identity and is the home of the ancestors, the site of religious and mythical links to the past and to the supernatural. Most regrettably, the government planners and economic developers have consistently refused to understand when they simply push indigenous peoples off their land or when they glibly offer monetary compensation or relocation in exchange of the land expropriations. The opinion of the *World Council of Indigenous Peoples* regarding such special relationship are worth quoting:

> The Earth is the foundation of indigenous peoples. It is the seat of spirituality, the foundation from which our cultures and languages flourish. The earth is our historian, the keeper of events and the bones of our forefathers. Earth provides food, medicine , shelter and clothing. It is the source of our independence, it is our mother. We do not dominate *her:* we must harmonize with her. Next to shooting indigenous peoples, the surest way to kill us is to separate us from our part of the Earth.[62]

(iii) Legal and Philosophical Conflict

This emotional ties of the indigenous peoples to their land gives rise to a conflict between modern western thought, which regards land as properly and a some of profit, and the spiritual ties of most indigenous peoples to the earth. For indigenous cultures the private ownership of land is unimaginable or rather,

land ownerships is simply unthinkable. According to an African author :

> ... land (in black Africa) is regarded as a divinity. It belongs to itself and as a result belongs to no one. Because of its nature, it cannot really even be given; nor can it be taken because, ... it is not man who possesses the land, it is the land which possesses man..... How can heaven or the heat of the Earth be bought or sold? This way of thinking is alien to us. If we do not possess the freshness of the air nor the reflection of water how can you bury them us? ... The Earth is our mother. The evils which affect the Earth also affect their son of the Earth. It men spit on the Earth, they are spitting on themselves. This we Know : the Earth does not belong to men, men belong to the Earth... How can a man own his mother? ...[63]

This philosophy and relationship with the land leads to a legal conflict between the Western concept of private ownership taken as the right to enjoy and dispose absolutely of a commodity and the collective and screed concept of land ownership. Western ownership seen in abstract terms is ownership = *usus+ fructus + abusus;* the *usus* and the *Fructus* form usufruct and both an ultimate allocation and alienability are required in order to constitute the third aspect of *abusus;* it is true that *abusus* in Roman law cannot be directly translated as *abuse* but it is equally true that the *Sacrosanct* private ownership of land or other assets can lead to abuse. Owing to the special nature of the land, the indigenous philosophical concept does not comprise abuse or their possibility of disposing of it absolutely, but rather its sacred aspect implies an attitude of respect and its conservation for future generations.

(iv) Claims over Natural Resources

Besides the indigenous concept of land and its emotional ties, the land problem is closely related with its natural resources. The indigenous land and territories are often seen as important repositories of unexploited natural resources. Since second world war, the indigenous territories have been identified as areas of vital national and international importance for economic value. Consequently, a number of problems arise in connection with the

use of resources either directly on the territories of indigenous peoples or in some way directly affecting them. For example, in the Amazon of Brazil and the tropical jungles of southern and South Eastern Asia, the indigenous and tribal peoples occupy forests rich in tropical timber-a commodity of great demand in the international market. Logging companies, which had received permits from respective governments and have opened roads into indigenous territories had cut down precious tropical forests at an alarming rate. Similar phenomenon took place in the hills of Thailand, Burma, India, Malaysia and Philippines.[64] This process usually destroyed the existing ecology in which indigenous and tribal peoples had found refuge. The same applies to the construction of hydroelectric plants in Bangladesh, Brazil, Canada, Guyana, India, Malaysia, Mexico, Philippines, Norway, Sweden and USA where the land of indigenous peoples was affected and traditional economies are destroyed. Indigenous peoples are also frequently affected by mining and the extraction of oil and gas. In many parts of the world indigenous peoples sit on rich reserves of minerals that are coveted by multinational corporations and governments alike. Even when the indigenous land rights are granted, possession of sub-soil resources reserved by the government for itself. Thus, when governments grant prospection and mining rights to private companies, the later does not consult with the local indigenous peoples. It has been reported that :

> Mines, perhaps more than other economic development contribute to the breakdown of the close association of indigenous peoples with their land. New mining transforms familiar landscapes. Mountains and valleys which have been immutable for Centuries are turned into featureless wildernesses. For indigenous peoples such physical assault on their land is an act of desecration... Sacred sites have been mined throughout Australia and in one instance an entire sacred mountain in Western Australia was dug up and shipped out in the form of iron ore, without any consultation with its Aboriginal owners. Adding insult to injury in the fact that the mining projects on indigenous peoples' land, despite the enormous wealth generated, bring little in return to those who are dispossessed and displaced.[65]

(v) Restitution of Land

Another controversial issue regarding the land claim of indigenous peoples is the restitution of indigenous land whether taken by conquest in violation of treaty obligations, or through 'legal' alienation in which indigenous peoples have been unable to prove their title. Indigenous peoples do not only claim the permanent control and enjoyment of their aboriginal ancestral historical territories, but they are also demand immediate restitution of those lands which had been illegally taken away from them and are presently in the occupation of the States, multinational corporations and non-indigenous populations. They also demand compensation for loss of use of their land resulting from their illegal occupation. It has also been asserted that indigenous peoples' desire to regain possession and control of sacred sites must always be respected.[66] These claims are bound to be resisted by governments and private parties which exploit indigenous lands and sub-soil minerals and oil deposits. In fact, these conflicts have already arisen and will continue to arise in the context of national development plans. Many governments refuse to relinquish what they consider to be national assets, which are frequently described as such in laws and even institutions. They assert ownership of all rights to sub-soil reservers, even if indigenous or private ownership of land is recognised. Many States maintain that incursions into traditional indigenous land are necessary to ensure national security particularly where such land are in border areas.

(vi) Right of Land Ownership under International Law

The right of land ownership is guaranteed in the International Labour Organisation (ILO) *Convention No. 107* of 1957 *(Indigenous and Tribal Populations Convention, 1957)* concerning the protection and integration of Indigenous and other Semi-Tribal populations in independent countries, revised ILO *Convention, No. 169* of 1989 *(Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 1989)* and *UN Draft Declaration on Indigenous Rights.*

(a) ILO Convention No. 107

International Labour Organisation Convention No. 107 of 1957 is the binding international instrument. This Convention was

adopted by the *International Labour Conference* at its Fortieth Session at Geneva on 26 June 1957 and entered into force on June 2, 1959. India was among the first few countries to ratify[67] this in 1958. Articles 11 to 14 of the convention deal with the provisions concerning the land right of indigenous peoples.

Article 11 states that the right of ownership, collective or individual, of the members of the populations concerned over the lands which those populations traditionally occupy shall be recognised.

Article 12 provides that the indigenous populations shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said population. When removal is necessary as an exceptional measure, they shall be provided equal to that of land or compensation as they prefer. They shall be compensated for any resulting loss or injury.

Article 13(1) guarantees that the procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.

Article 14 directs that national agrarian programmes shall secure to the populations concerned treatment equivalent to that accorded to other sections of the national community with regard to : (a) the provision of more land for these populations when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers; (b) the provisions of the means required to promote the development of the lands which these populations already possess.

(b) ILO Convention No. 169

The above mentioned *Convention No. 107* of 1957, however, was revised by the ILO *Convention No. 169 of 1989 (Convention Concerning Indigenous and Tribal peoples in Independent Countries).* This new Convention No. 169 of 1989 is a development over earlier

Convention No. 107 of 1957. The *Convention No. 169* entered into force in 1991. The new *Convention No. 169* in articles 13 to 19 included provisions concerning the land rights of indigenous peoples.

Article 13.1 states that ..." governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship".

Article 14 provides for the recognition of the rights of ownership and possession of lands traditionally occupied and recommends adequate legal procedures be established to resolve land claims.

Article 15 guarantees the protection of natural resources and the right of indigenous peoples to participate in the use, management and conservation of these resources. It also establishes procedures for consultation in the exploration or exploitation of such resources and in the benefits from them.

Article 16 provides that the people concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary, they must be notified and take their free and informed consent. This Article also establishes the right to return to their traditional lands when conditions permit; when such return is not possible they must be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them. It further provides for full compensation for any loss or injury occasioned by the relocation.

Article 17 provides for respect for traditions as regards inheritance of land. The machinery for consultation in the event of the alienation of their land from the community is specified. The third paragraph of this Article states that : "persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownerships, possession or use of land belonging to them."

Article 18 declares that "Adequate penalties shall be established by law for unauthorized intrusion upon or use of the lands of the peoples concerned, and governments shall take measures to prevent such offences."

Article 19 lays down that agrarian programmes shall secure to indigenous peoples "treatment equivalent to that accorded to other sectors of the population with regard to : (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers, (b) the provision of the means required to promote the development of the lands which these peoples already possess."

(c) Draft Declaration on the Rights of Indigenous Peoples.

The most provocative provisions regarding the land rights of indigenous peoples are included in the *Draft Declaration on the Rights of Indigenous Peoples*[68] prepared by the *Working Group on Indigenous Populations*. The *Draft* admitted the spiritual relationship of indigenous peoples with their land, rights of natural resources and restitution of land. In this connection the principles submitted by the *World Council of Indigenous Peoples* to the *Working Group* in its fourth session in 1985 is reflected into the *Draft*.

Following the Article 13 of the ILO *Convention No. 169*, the Article 25 of the *Draft Declaration* states the importance for indigenous peoples that of their relationship with the land. Article 25 declares that : "Indigenous peoples have the right to maintain and strengthen their district spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or other wise occupied or used, and to uphold their responsibilities to future generations in this regard."

The scope of the indigenous land right is clarified in Article 26 of the draft which recognises the right of indigenous peoples to own, develop, control and use the lands and territories, including the total environment of the lands, air, water, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land

tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of, or encroachment upon, these rights.

The rule regarding the restitution of indigenous land is included in Article 27 of the *Draft* which provides that the indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. The consent of the indigenous peoples is required before the state can undertake or permit exploration for and exploitation of mineral and other subterranean resources in areas belonging to indigenous peoples. This far-reaching rule is described in the *Draft Declaration* as an "obligation", with the rider that just and immediate compensation must be made for any activities of this kind. Although this question is not so directly regulated in Article 14 of the *Convention No. 169*, the same conceptual in used.

The above analysis of the relevant provisions of both the *ILO Conventions* and the *Draft Declaration on Indigenous Rights* reveal that the present trend of international law is towards the recognition of the indigenous land rights, special relationship of indigenous peoples with their Lands and resources, restitution of indigenous land, and the rule regarding just and immediate compensation. It can, however, be recommended that the Indigenous Peoples should be guaranteed the principal rights to their own land areas. They should also be ensured a decisive influence on the utilization by the nation-state of their natural sub-soil resources.

(B) Rights of Indigenous Peoples Related to Culture, Language and Education

(i) Rights of Indigenous Peoples related to Culture

(a) Cultural Discrimination against Indigenous Peoples

An important criteria for identification of indigenous peoples is their culture as a whole.[69] Culture is a complex pattern of social relationship and spiritual values, which gives meaning and identity to a community life. It is also a source for solving the

problems of everyday life, through the basic concepts inherent in a particular culture. Indigenous groups preserved their own basic conceptions by cultural values, through centuries, in isolation from other segments of the populations.[70] Their encounters with the dominant cultures, however, created serious repercussions for the indigenous and tribal cultures. The colonists and the successor governments vigorously pushed the cultural homogenization programmes and policies entailing the disappearance of indigenous cultures. They were forced to abandon their culture and accept the culture of the dominant group. Their cultures were misinterpreted and misunderstood, and the indigenous communities were very often viewed as primitive and backward.[71]

Paradoxically, Government pursued discriminatory and oppressive cultural policies to develop a national culture and modernise the so called backward native societies. To this process of modernisation, indigenous cultures became victims of dominant cultures. Although governments generally deny that they pursue the policy of cultural genocide and usually affirm that their policies are intended to improve the situation of the indigenous communities, the thrust of cultural policies of many countries are essentially assimilative, integrative or amalgamative in character. In fact, the government policies are based on the assumption that 'modern' culture is superior to 'primitive' culture and on notion of *Social Darwinism*, that the 'strong' culture would prevail over 'weak' culture. The UN *Special Rapporteur* notes that :

> The Policies followed at in many great States were based on the assumption that indigenous.... cultures..... would disappear naturally or by absorption into other segments of the population or the natural culture.[72]

The phenomenon of cultural genocide and ethnocide takes various forms and is now visible in the field of religion. In post, particularly during colonial era, indigenous religious practices were often forbidden, now-believers were killed, prosecuted and forcibly converted and children were forcibly taken into missionary schools.[73] Although this situation is non rarely reported and there is no statutory restriction for the religious practice of indigenous peoples in most of the countries, the *de facto* situation is quite

different. For example, the religious rights of American Indians and Alaska Natives are guaranteed by the U.S. Constitution on it is for all other American citizens. But according to one report "a preference is given to Christian Indians and Christian institutions in the administration of government programmes."[74]

The violation of sacred and burial sites is another form of ethnocide. Indigenous Organisations claim that numerous objects and artifacts in museums and private collection around the world are being stolen from sites and monuments that still have cultural as well as religious and symbolic value for indigenous people. It may by noted that their sacred sites are constantly being destroyed by land developers, government projects, military activities, grave diggers etc.[75]

The protection of cultural and intellectual properly of indigenous peoples is a very controversial issue.[76] In fact, the knowledge indigenous peoples had gathered over centuries is being exploited by commercial companies for their own profit. For example, scientists of foreign companies have stolen the plant and the traditional knowledge associated with indigenous medicine and patented it. According to one report, 7,000 natural compounds are used in modern medicine had been utilized by indigenous healers for centuries.[77] Similarly, the exploitation of artistic expressions like handicrafts, dances, ceremonies, music etc. of indigenous peoples for tourism with complete disregard for authenticity and preservation has degenerated indigenous cultures. The UN *Special Rapporteur* Daes states :

> Protection of cultural and intellectual property rights of indigenous peoples was connected with the realisation of their most fundamental rights, such as their territorial rights, the right to self-determination, the right to preserve their traditions, knowledge and values.[78]

(b) Towards Recognition of Indigenous Cultural Rights

In recent years indigenous peoples in all parts of the World have voiced their concerns against homogenisation programmes and policies entailing the disappearance of their own cultures and placed their survival problems in the national and international

fora. Moreover, in contemporary experts affirmed that the cultural diversity in itself is not contrary to national unity. Indeed, artificially produced uniformity may be a source of weakness and hostility.[79] The World opinion has become more conscious to protect the indigenous peoples' traditional culture as there has been a corresponding interest. New thinking in the international community emphasizes the need of respect for nature and the environment, of sustainable development, and of a holistic approach to problem solving and these ideas reflect very closely the traditional cultures of many indigenous peoples. The *United Nations* is now recognising the important place of indigenous peoples in the Global family, not only in the field of human rights, but also in the areas of environment, development and culture[80]. Since indigenous traditional culture and knowledge have a vital importance in environmental management and development, the *Rio Declaration 1992* urged the States "to recognise and duly support their identity and culture to achieve sustainable development".[81]

During the last few years, perhaps, since the middle seventies, some governments have become sympathetic to protect and preserve indigenous culture and have designed new cultural policies in which indigenous cultures have been taken into consideration. The *World Bank* also has now decided to make credit for major development projects in the third World Countries upon safeguards for the well-being of tribal peoples.[82] Unfortunately, the development of the cultural policies aimed at protecting and strengthening indigenous cultures are being developed slowly. Besides, many States do not wish to admit that they are multiethnic and multicultural societies. All this prompted, the UN *Special Rapporteur* to recommend the formulation and implementing a cultural policy as an obligation of the State. It said that:

> In multi-ethnic societies, action must always be based on criteria which, at least in principle, assert the equality of the cultural rights of the various ethnic groups. The State has the obvious obligation to formulate and implement a cultural policy which will, among other things, create the necessary conditions for the co-existence and harmonious development of the various ethnic groups living in its territory, either

> under pluralist provisions which guarantee that one group will not interfere with another, or under other programmes which guarantee equal and genuine opportunities for all.[83]

(c) Cultural Rights of Indigenous Peoples under International Law

(1) General Provisions

The *Universal Declaration of Human Rights*, 1948, contains the express reference to the cultural rights. This *Declaration* recognises the "right to culture" in several places, as when it explicitly states that "everyone, as a member of society", is entitled to cultural rights (Art. 22); "every one has the right to freely participate in the cultural ties of the community"(Art. 27) Furthermore, Article 15 of the *International Covenant on Economic, Social and Cultural Rights, 1966*, recognises the right of everyone to take part in cultural life. But both the *Declaration* and the *Covenant* refer to "national" cultures and not the indigenous cultures.

Article 27 of the *International Covenant on Civil and Political Rights, 1966*, recognises the cultural rights of minorities, which is more relevant for indigenous peoples than foregoing two instruments. The Article 27 runs as under :

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own Language.

It would appear that this Article does not constitute on effective, basis for a system of protection of minorities rights. In the first place, by introducing the text with the phrase "In those states in which..... minorities exist,". Article 27 leaves the entire question of definition wide open. The States may deny that they have any minorities in their respective States. Who and under what circumstances, is to be decided whether minorities exist within a certain State ? Secondly, the Article clearly refers to individual rights ("persons belonging to such minorities.....") and not collective rights. Thirdly, the rights of minorities are protected negatively ("persons belonging to such minorities shall not be

denied..."), and the text does not impose on States any active obligation to enhance the minority rights. Besides this, the Article 27 is related to ethnic minorities' right and there is no mention of indigenous peoples. In fact, indigenous peoples refuse to be categorised themselves as "ethnic minorities", they themselves as "peoples". For these reasons indigenous peoples consider that this Article is a very weak statement of cultural rights. However, it should be remembered that Article 27 is a step forward in the right direction in the transition from individual to collective rights in the Work of UN.

The Declaration of the Principles of International Cultural Co-operation, 1966, States that "each culture has a dignity and value which must be respected and preserved" and, furthermore, "every people has the right and the duty to develop its culture".[84] Similarly, the *Declaration on Race and Racial Prejudice*, 1978 affirms that all individuals and group have the right to be different and the right to maintain cultural identity. These two instruments represent another step forward to collective cultural rights rather than individual freedoms.

In respect of cultural and intellectual property of indigenous peoples, it is found that there are many provisions in international legal instruments. The principal instrument in this field is the *UNESCO Convention on the Measures of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownerships of Cultural Property*, 1970. The Convention provides that a State party can request other State parties to impose emergency import controls on an object. According to the Convention requests must be made by States, both States involved in dispute must be parties to the Convention, and the removal of the object must have occurred after the Convention came into force in both the States, necessarily after 1972. As most of the largest art importing States, such as France, Germany, Japan and the United Kingdom are not parties to the convention, and indigenous peoples lost much of their cultural properly before 1972,[85] the convention is unhelpful in preventing the illegal export of indigenous cultural properly. *The Convention on the Protection of Archaeological and Artistic Heritage of American Nations, 1976,* the *Berne Convention for the Protection of Literacy and Artistic Works, 1886, the International Convention for the Protection of Plants, 1961, the Geneva Treaty on the International*

Recording to Scientific Discoveries, 1978 are some important international instruments in this regard. But none of these instruments directly addresses Cultural and Intellectual properties of indigenous peoples.

(2) Specific Provisions

In 1970, for the first time, *Intergovernmental Conference on Cultural Policies* recognised that in States in which a federal structure prevails, cultural autonomy should be accepted as a guiding principle. The Conference also expressed its apprehension at the fate of indigenous cultures around the world and recommended that local cultures be maintained and protected. *The European Regional Conference on Cultural Policies,* 1972, made references to national and immigrant minorities in European countries. In 1975, *African regional Conference* emphasised the need to protect the population and traditional cultures, oral traditions and cultural pluralism. UNESCO has organised the *World Conference on Cultural Policies* in 1982, where stress was given to the cultural rights and needs of cultural minorities. It may be mentioned here that the above mentioned world conference of 1970 reflected a changing awareness about the specific cultural rights of the indigenous peoples However, rest three conferences of 1972, 1975 and 1982 reflected on the cultural rights of the minorities.

It may be noted that while internationally recognised cultural rights of the ethnic minorities are general in character, many instruments recognise specific cultural rights of indigenous peoples. The ILO *Convention, No. 169* of 1989[86] expressly guarantees the specific cultural rights of the indigenous and tribal peoples. Articles 4 of the convention provides that "special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the indigenous peoples" in accordance with their own "freely-expressed wishes". In addition, "the integrity of the values, practices and institutions of these peoples shall be respected", they "shall have the right to retain their own customs and institutions", and the right "to control" to the extent "possible, their own economic, social and cultural development"(Arts. 5, 7, 8). States parties of the convention are directed to "respect the special importance for the cultures and spiritual values of the peoples

concerned of their relationship with (their) lands or territories"(Art. 13).

Besides the ILO *Convention No. 169*, the *Draft Declaration on Indigenous Rights* prepared by the UN *Working Group*[87] includes a few Articles on the subject. The Article 7 of the *Draft Declaration* guarantees protection of indigenous cultures against ethnocide when it states that "Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for :

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propagation directed against them".

Articles 12 and 13 recognise the right to cultural tradition and customs, including cultural and intellectual property rights of the indigenous peoples. Article 12 lays down that indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the rights to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual religions and spiritual property taken without their free and in formed consent or in violation of their laws, traditions and customs. Furthermore, Article 13 recognises the right of indigenous peoples to manifest, practise, develop and teach their spiritual and religious traditions. customs and ceremonies, the right to maintain, protect, and have access in privacy to their religious and cultural sites, the right to the use and control of ceremonial

objects; and the right to the repatriation of human remains. The Article also imposes responsibility upon States to take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected. Article 24 contains another important right regarding indigenous traditional medicine. It guarantees the right of indigenous peoples to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals. The Article further states that they also have the right to access without any discrimination, to all medicinal institutions, health services and medical care.

It would appear that the *Draft Declaration* recognises the practices and revitalization of almost all indigenous cultural traditions and customs. This arises the question whether there exists a human right to cultural identity. In this respect two basic issues may arise. The first relates to the process of cultural change. Since culture is not a static but a dynamic pattern of social relationship and spiritual values, no protective cultural policy can be designed to keep them intact. The solution to this issue is that indigenous and tribal peoples should be allowed to manage their own cultural affairs and develop their own potential with the support their own potential with the support of the State. This, however, raises another question as to way States should extend its support to indigenous peoples in this regard. The reason for extending such support is not difficult to comprehend. In the absence of such support there is a likelihood of the disappearance of the indigenous culture as a result of ethnocidal pressure. The second basic issue is that certain traditions and customs in indigenous cultures are considered to be in violation of *universal individual human rights*, for example, sexual mutilation of children and adolescents, the formal and social inferiority of women etc. The question is which one should get priority, the *collective right to cultural identity* or the *universal individual human right to liberty and equality*? In all the national and international debates on indigenous rights this had been, and could be a in future, a key issue. Therefore, it can be recommended that codification of customary law and studies on the relationship between customary legal systems of Indigenous societies and international legal arrangements should

be undertaken. This is necessary for facilitating the recognition of Indigenous legal solutions and also for a harmonious development between the different legal systems.

(ii) Rights of Indigenous Peoples related to Language

(a) Linguistic Discrimination against Indigenous Peoples

The promotion and protection of indigenous languages in *sine qua non* for the preservation of their respective cultures, traditions, beliefs, religious practices and way of life. A language is the expression of the common culture of the people who speak it as their mother tongue. In learning a language a child acquires the basic cultural heritage of his people and his times. A person's mother tongue, is his main vehicle for contact with the world around him. This mother or native tongue is the instrument whereby oral history, myths, and beliefs are shared by a community and transmitted from generation to generation.[88] In general, language is not only an important instrument of community's integration but is also an important test to identify them. This is also true with respect to the indigenous peoples. Indigenous peoples the world over are recognised through their native tongue. Most of these languages are unwritten. There are thousands indigenous languages in the world. Hundreds of indigenous languages are used in India, Brazil and Indonesia. In Mexico, where the indigenous peoples represents approximately 15 per cent of the total population, 56 different indigenous languages and many more dialects have been identified. All those factors emphasize the need of protection, development and revitalisation of the indigenous languages.

Tribals live in tribal Universe, speak dialects of tribal languages, practise tribal worship and fallow patterns of tribal leaders. Any dilution in the form seriously affects their social system which has evolved over centuries. Since they are already at the primitive stage of the development process, enforcing the alien language which is in advanced stage would mean to skip over the stages of growth and development of indigenous and tribal languages. This will result their impoverishment, social backwardness and disintegration of their social structure.[89]

The history of indigenous peoples is the chronicle of their unsuccessful efforts to defend their languages from the onslaught

of colonial languages. The colonists considered native languages, especially if unwritten as were 'dialects' and adopted not only negative, rather hostile attitude toward indigenous languages, as a result of which such languages began to lose their cultural identity. It created serious psychological and learning problems among school age children of indigenous peoples and presented serious social, economic and cultural problems for them. The language policies pursued first by the colonist and then by the successor governments denied official status to indigenous languages and prescribed the language of dominant group for the use in official and administrative dealings.[90] In most of the countries the indigenous languages were not taught in schools and the peoples who used them were discriminated and treated by the non-indigenous as outsiders, foreigners, barbarians, primitive and so on. Behind the language policy there existed a concept which the UN *Special Rapporteur,* after extensive analysis of state practices, characterized in the following words:

> The policies followed in great many States were based on the assumption that the indigenous.... Languages would disappear... in the face of dynamism, the quality and the attraction of the official languages-international languages which were assumed to have real and imaginary advantages of all kinds, and were considered particularly suited to science, technology, art and civilization. For the reasons, no stress was laid down on State plans to teach the indigenous languages or use them as languages of instruction for some of the initial phases of education.[91]

The governmental policies of the States had been designed taking into predominant view of national assimilation. There was an assumption that whereas single prevailing language in a State leads directly to unification of a nation, on the contrary, the use of multiplicity of recognised languages in a country constitute an obstacle to national unity. One report concluded that the States considered indigenous languages to be :

> ... contrary to the best interests of those societies and involved danger for national unity, since it was feared that it would lead inevitably to linguistic insularity and excessive social and political fragmantation.[92]

Even at the end of the colonial dependency, the newly independence States by and large followed the same assimilationist policies. Thus, no State thought it desirable to recognise indigenous language as State official language.[93] In many countries the language of former colonizers became the official language.[94] Some countries have chosen one or more national languages in addition to English, the language of the former colonizers.[95] In some countries, the national language was made the official language.[96] As a result of State policies, indigenous peoples began to lose their cultural identity. The general language policies compelled a person of the tribe or indigenous community to learn official or native language of the country and making them bilingual. Their interactions with the outside world due to economic reasons also contributed to the process of bilingualism. The general attitudes of discrimination against indigenous peoples are related with the negative attitude of dominant society against indigenous languages. This hostile attitude of the non-indigenous section of the society led the indigenous peoples to feel ashamed of their language and culture. This took place particularly in case of European settler societies where biological difference between the upper classes and indigenous peoples are visible.

(b) Increasing Demands for Linguistic Pluralism

In the recent years, the contemporary experts have denounced the assumptions underlying the assimilative language policies. They convincingly realise that diversity in itself is not contrary to unity. An artificially produced uniformity may be a source of weakness and hostility. They assert that there is no basis for the view that a multiplicity of national languages is a obstacle to national unity. A single prevailing language leads directly to unification, has not been proved in practice. Similarly, the claim that there are languages which lead themselves more readily to science, technology, art, civilization, has been denied by the experts. As a matter of fact all languages which provide a suitable means of communication are capable of everything the others can do. Scientific and technological terms have formed in Greek and Latin words and have come to be used in all 'developed' languages.[97] The UN *Special Rapporteur* aptly states that :

> It is believed today that these policies, which in some cases have prevailed for centuries, do not seem to have been well-grounded, to judge by their effects. Although some peoples and their languages have disappeared for variety of reasons, the great majority are still with us. This vigorous presence of indigenous peoples and languages in many parts of the World is an established fact.[98]

In recent years, indigenous and tribal peoples have began to resist against the forced disappearance of their languages. A growing awareness has risen among scientist, educators and politicians that the maintenance of indigenous language within the concept of *linguistic pluralism* is not necessarily undesirable for a given country. The UN *Special Rapporteur* states :

> There is increasing acceptance of the need to recognise, once and for all, the plurilingual and pluricultural nature of the countries where indigenous populations live and to adopt unequivocally policies which permit and promote the conservation, development and dissemination of the specific ethnic nature of those populations and its transmission to future generations.[99]

As a result of increasing demands, a number of countries have recently changed their traditional postures of discrimination against, and neglect of, indigenous and tribal languages, and have designed policies to protect and promote these languages. In Latin America, in some recent national Constitutions and general laws, indigenous languages have finally been recognised as part of "national culture". Similarly in India, two tribal languages, Manipuri and Nepali have been inserted in the Eighth Schedule to the Constitution by the Constitution (Seventy-first Amendment) Act, 1992.

(c) Linguistic Rights of Indigenous Peoples under International Law

Article 27 of the *International Covenant on Civil and Political Rights*, 1966, affirms that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to use their own language. But, as was pointed out earlier, the indigenous

organisations the world over refuse to be categorised among "ethnic minorities". At the regional level the periodic inter-American indigenist congresses and meetings of governments belonging to the *Organisation of American States* have reaffirmed for several years the linguistic rights of the indigenous populations of the American countries. However, a number of member States of the UN do not appear to pay much more attention to these resolutions domestically. UNESCO has also affirmed the importance of the use of vernacular languages as an integral part of the cultural policies of States, and particularly as regards education of minority groups.

The *UN Draft declaration on Indigenous Rights* recognises the indigenous peoples' linguistic rights. Article 14 of the *Draft* states that the indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, language, oral traditions, philosophies, writing, systems and literatures and to designate and retain their own names for communities, places and persons. The Article further imposes responsibility on the States to take effective measures, whenever any right of indigenous peoples may be threatened, and to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provisions of interpretation or by other appropriate means. In this context, it may be recommended that public awareness should be created to protect Indigenous language.

(iii) Rights of Indigenous Peoples related to Education

The survival of indigenous culture and language is closely related with the educational policies of the State. Until recently, in most Nation States, policies designed to promote the assimilation of the indigenous peoples into the dominant group were prevalent. However, in recent years the situation has considerably changed. Some countries for instance, USA, Canada, India designed policies to accommodate the needs of indigenous groups. In formulating and implementing such policies these countries have faced many difficulties and intricate issues. The first issue, of course, relates to modern educational system. Indigenous peoples consider the modern formal educational process as destructive of their society

and culture. They vigorously demand the introduction of indigenous autochthonous educational system instead of modern educational process. Another more complex issue relates to medium of instruction in teaching. Indigenous organisations demand the use of their languages in schools and other educational institutions as well as in mass media. The third issue relates to culture. Time and again indigenous peoples have demanded that not only education should be implemented in indigenous languages; but also that the indigenous cultures should receive their due place in the present educational system. Let us deliberate in detail some of these issues.

(a) Modern Educational Process versus Indigenous Autocthonous Educational Process

It is a matter of common knowledge that in many States since colonial times, the schooling of indigenous peoples were frequently left in the hands of Christian missionaries first by the colonial governments and then by the national governments. Numerous members of indigenous and tribal peoples passed through missionary and government schools over the decades.[100] Consequently, most of them became integrated into the national society and economy, but in this process, they left their traditional society behind. However, in contemporary indigenous movements, many leaders who have passed through missionary schools have rejected this kind of education to which they themselves were exposed. They consider such education fundamentally destructive to indigenous and tribal societies and peoples, and affirm that their traditional autochthonous educational system is more suitable to revitalize their cultural traditions, customs and their history, philosophy, languages etc. which are more important for them than anything else. Thus, the indigenous peoples and organisations not only condemn the prevalent States' educational policies but also demand their replacement by their autochthonous educational system and culture. The *UN Special Rapporteur* states in this regard thus :

> The right of indigenous populations to education has not been duly guaranteed and is not really observed. States frequently do not recognise traditional indigenous education based on autochthonous

> educational processes and often deliberately aim at doing away with it and replacing it by formal, alien and alienating educational processes.[101]

It is gratifying to note that in various countries indigenous organisations and sometimes sympathetic governments are experimenting with new linguistic and educational policies taking into account the indigenous autochthonous educational system. Some countries have started to recognise the right of certain groups to establish and run their own educational institutions, for example, India. Some countries have even started alternative systems of education, stressing traditional forms of indigenous education. Thus, the *Federation of Native American Controlled Survival Schools* and *Native American Alternative Education Programmes and Schools*, were formed in 1975, in response to the need to have a formalised voice for the growing concern of Indian alternative educational programmes. These programmes and schools have undertaken several projects, most of which are in USA, but a few are located in Canada.[102]

(b) Educational Rights of Indigenous Peoples under International Law

Articles 26 to 28 of the *ILO Convention No. 169* on Indigenous and Tribal Peoples, 1989 have imposed the responsibility on Governments to take measures for the education of the indigenous and tribal peoples. Article 26 provides that :

> Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on an equal footing with the rest of the national community.

Article 27 also directs that educational programmes and services for the indigenous peoples shall be developed and implemented in co-operation with them to address their special needs and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate. Article 28

further provides that : "Children belonging to these peoples concerned shall.... be taught to read and write in their own indigenous languages.....".

The *UN Draft Declaration on Indigenous Rights* also includes three Articles on the right of education of indigenous peoples. Article 15 reads : "Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have the right to be provided access to education in their own culture and language". Article 15 also imposes the responsibility upon the States to take effective measures to provide appropriate resources for these purposes. Article 16 recognises the indigenous right to have their own tradition in education. The Article affirms that : "Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information". The Article also lays down that States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society. Article 17 recognises the right of indigenous peoples to establish their own media in their own languages. Under the terms of the Article they have the right to equal access to all forms of non-indigenous media. To achieve these objectives States have been directed to take effective measures for ensuring that State-owned media duly reflect indigenous cultural diversity.

It is clear from the foregoing description that the present trend is towards the recognition of several aspects of indigenous culture. The view that is now gaining recognition in international fora is that since indigenous peoples contribute to the diversity and richness of civilization and cultures, which has the vital importance for the common heritage of mankind, there is urgent need to respect and promote the cultural distinctiveness and cultural identity of such peoples. The policy of cultural assimilation is being discarded everywhere and cultural pluralism is taking place of both the national and international levels. The present

trend is also towards recognition of linguistic pluralism, as there is hardly any State that does not have more than one linguistic groups. Since indigenous language is closely related with indigenous culture, the world public opinion is showing keen interest in the protection of indigenous language also. There is also a trend to recognise the autochthonous educational process for the education of the indigenous children. To sum up, there is a clear visible trend towards the recognition of the indigenous peoples' cultural, linguistic and educational rights at the national as well as international legal systems. In this context, it can be recommended that the knowledge about international standards developed over the past several decades by the UN bodies for protecting the rights of Indigenous Peoples should be disseminated through media coverage, literacy programmes and other promotional and cultural activities.

(C) Rights of Indigenous Peoples Related to Development

(i) Adverse impact of development on Indigenous Peoples

Most of the indigenous peoples live in the World's most vulnerable ecosystem : the arctic and tundra, the topical rainforests, the boreal forests, riverine and coastal zones, mountains and semi-arid rangelands. As a result of the adverse ecosystems, many indigenous peoples live in the poor social and economic conditions existing in their territories. They suffer from lack of basic health and education, leading to high infant mortality, low life expectancy and high illiteracy rate as well as large scale unemployment.[103] In spite of their vulnerable ecosystems, the territories used and occupied by indigenous peoples are often seen as important repositories of unexploited natural resources. Paradoxically, presence of these resources had turned out to be harmful to the indigenous peoples. Once largely inaccessible, these regions and their mineral deposits, hydroelectric potential, hardwoods, oil and new farm and pasture lands have now been put within men's reach by modern technology. The result has been that during the last 40 years or so, these lands have come under unprecedented pressure as governments, development banks, transnational corporations and entrepreneurs have searched out resources to supply the growing demand of industrialized countries as well as of the fast-swelling populations of the nations of the south. The territories used and occupied by indigenous peoples are often seen as

important repositories of unexploited riches. Thus, the land and resources of the indigenous peoples have come under their control not for benefiting the local indigenous population but for the benefit of the industrialized countries.[104]

The development schemes devised for the purpose of national development often seriously affect indigenous peoples' environment and their traditional livelihood. Industrialisation and technological development put heavy emphasis on the indiscriminate exploitation of natural resources in order to render them productive and to solve the urgent economic needs of the Nation States. It has caused much damage to the indigenous peoples especially to their lands, their national resources, their ecosystem in forest, their way of life, their beliefs and cultures.[105] The State planners and policy makers, while launching centrally promoted development programmes, do not take into account either the interest or claims of the indigenous populations and they hardly respect their economic and cultural rights. The effect of these programmes, very often initiated in the name of national development, has resulted into the displacement of millions of indigenous peoples all over the world.[106]

The construction of dams and hydroelectric projects have threatened indigenous peoples in tropical countries. In India two giant hydroelectric power projects, the *Sardar Sarovar Project* in Gujrat and the *Tehri Project* in Uttar Pradesh are expected to have disastrous effects on the local tribal population. It has been estimated that over the last decade approximately half a million tribal people have been displaced in India as a result of regional development projects.[107] Besides the economic development projects, governments' re-settlement policies cause serious damage and loss to the indigenous and tribal peoples. Thus, the experience of indigenous peoples and development clearly demonstrated that human rights and development are inseparable because the abuse of the rights of indigenous peoples is principally a development issue. For indigenous peoples, these development programmes are in practice *terra nullious* declarations. The States have often taken decisions unilaterally and have been imposed on the tribal people on the pretext of national interest or interests of the foreign transnational corporations. The indigenous peoples are generally not consulted and denied participation in decision making

regarding development programmes and policies. The reason for not consulting the indigenous population is the governments' belief that they one in a State of *Capitis diminuto*. In other words, governments believe that they are incompetent or minorities in the eyes of law.[108] In this way, these forced development has deprived them of their human rights, in particular the right to life and the right to their own means of subsistence, two of the most fundamental of all rights. Indigenous peoples have been, in fact, victims of development policies which deprive them of their economic base, land and resources, and they have never been the beneficiaries. In 1990, the *Global Consultation on the Realisation of the Right to Development as a Human Right* convened by the Secretary-General of the *United Nations* was held in Geneva, Switzerland. The report of this meeting contains the following observations :

> It was underlined that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental right of self-determination. Using illustrations, participants described how indigenous peoples are routinely pereceived as obstacles to development and excluded from decision making in matters that affect them. The result has been the elimination and removal of natural resources, waters, wildlife, forests and food supplies from indigenous lands either through commercial exploitation or incompatible land use; the degradation of the natural environment, removal of indigenous peoples from their lands; and their displacement or pre-emption from the use of their lands by outsiders.[109]

It is undisputed that indigenous cultures have an intimate relationship with land and nature, particularly environment in which they live. They have developed their life style in the ecosystem of the forest. But the irrational exploitation of the natural resources for industrial need destroying the ecological balance of the forest. Thus, the development policies are responsible for the ecological degradation, which greatly affects the human rights of indigenous peoples, particularly environment. The preliminary

report on the *Study on Human Rights and the Environment* states in this regard thus :

> The prevailing development process.... is not only damaging to the environment but may also be harming the way of life of many people, and especially indigenous peoples. Indeed, it can be said that all environmental degradation has a direct impact on the human rights of the indigenous peoples dependent on that environment. For example, where there is unrestrained deforestration, forest-dwelling indigenous peoples may be forced from their traditional homelands, may thereby be denied a means of livelihood, may be driven to take refuge among strangers and, in the most extreme cases, may fall victim to diseases against which they have no immunity. Similarly, desertification, a phenomenon which is as much man-made as it is an act of nature, has led many self-sufficient pastroalists to an impoverished existence in refugee camps. Even small-scale environmental sacrifices - the inundation caused by dam-building, mining, prospecting and so on - have affected indigenous peoples all over the world, causing them to leave lands they have occupied for generations, often without their willing consent or any compensation. Indigenous peoples may, thus, be victims of inappropriate development and environmental degradation. As such their fundamental freedoms and human rights are affected.[110]

Thus, in the absence of consultation or participation in discussions or decision-making, the indigenous populations were direct victims of development model which today threaten our planet. The first cries of alarm were not heeded and association between industrialization, irrational exploitation of natural resources and the development option and model mentioned was not made.

(ii) Sustainable Development and Indigenous Peoples

For the above mentioned reasons the industrial development model which was previously considered and defended in the

prompter of progress for mankind is now being questioned by environmentalists, planners and experts. Since 1980s, a new awareness has developed about the limits of development due to industrialisation and over exploitation of natural resources which caused major environmental threats to our planet resulting from, viz., acid rain, depletion of the ozone layer, the greenhouse effect, and depletion of tropical forests. The world opinion realise that the modern development is based on high technology, industrialisation and the irrational use of natural resources. This development is destructive to the mankind because the existing development model did not respect men. The people also began to realise that development demands an approach of humility and respect, of cooperation and the sacrific of cherished vested interest, and it depends upon participation and wisdom. It is necessary to accept the fact that the just relationships between countries and between communities and individual within countries, are the fundamental precondition for development.[111] At the beginning of the 1990s, people began to talk about *human development*. A start was made on measuring progress by introducing the *human development index* (HID) instead of *gross national product* (GNP) as the instrument of measurement of development. The HID consists three indicators for measuring development :

1. Life expectancy (which implies health and living conditions),
2. Literacy (which implies education, the ability to hold down a job and appreciate one's surroundings and culture), and
3. Purchasing power (which implies the ability to buy products and to satisfy basic needs).[112]

The world opinion increasingly recognises that the protection and preservation of the environment of biosphere is *sine qua non* for the achievement of *human development*. If a harmonious balance is not established between the challenges of development and the imperatives of environment, the very survival of the mankind will be endangered. Accordingly, the emphasis is now on *sustainable development*.[113] This concept has developed in response to prevailing development model which has caused "cries of alarm" in the contemporary international society. The expression *sustainable development* implies a growth of

awareness and a search for balanced development policy and the impact of human activity on the environment. In other words, it implies an attempt to take account of the relationship between the economy and the biosphere. *Sustainable development* should be understood as development which is immediately supportable, but viable and durable too, in other words, development which satisfies the needs of the present without diminishing the capacity of future generations to meet their own needs. The essence of this new approach is the concept of *intergeneratinal equity*. According to Sylvie Fauchex and Jean Francois, the concept of *intergenerational equity* comprises three basis principles :

1. each generation must conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict future generation's options. Each generation is entitled to diversity comparable to fast generations;

2. each generation must maintain the quality of the planet so that it is passed on in no worse condition than it was received. Each is entitled to inherit an Earth comparable to the Earth which sustained its forebears;

3. each generation should provide its members with equal rights of access to the legacy from past generations.[114]

It is to be noted that the cultures of indigenous peoples contain the concept of *sustainable development*. They have a special relationship with land and the environment in which they live. In nearly all indigenous cultures, the land is considered as *Mother* Earth, and it is the core of their culture. Furthermore, indigenous peoples have over a long period of time, developed successful systems of land use and resource management. Traditionally, they have developed thousands of experience and observations for several millennia, which are relevant in providing future options for *sustainable development*. For a long time indigenous traditional technology and system, viz., nomadic pastoralism, shifting cultivation, various forms of agro-forestry, terrace agriculture, hunting, herding and fishing were considered inefficient, unproductive and primitive.[115] However, as the world opinion grows more conscious of the environment and particularly of the damage being done to fragile habitats, there has been a corresponding interest in indigenous land-use practices. In short,

the notion of sustainability is the essence of both indigenous economies and their cultures.[116]

Obviously much attention is now being taken in adopting the techniques and methods utilised by the indigenous peoples for conservation of natural resources. It is now increasingly being felt that we can learn much how to sustain natural resources and its management from native indigenous peoples. The *Rio Declaration on Environment and Development*[117] held in Rio de Janeiro, Brazil in 1992, emphasised the "vital" importance of indigenous peoples' traditional knowledge of the ecosystems in which they live. The Principle 22 of the *Declaration* affirmed in the following words :

> Indigenous peoples and their communities and other local communities have a vital role in environmental management and development because of their knowledge and practice. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Against this background, the relevant provisions of the UN Charter and the international instruments pertaining to right to development of indigenous peoples under international law may be discussed.

(iii) Right to Development of Indigenous Peoples under International Law

(a) General Provisions

An objective reading of the *UN Charter*, the *Universal Declaration of Human Rights*, the two *Human Rights Covenants* and the other human rights instruments including the declarations by various UN organs and specialised agencies indicate that efforts are being made to seek greater happiness for the human species. The idea of development[118] is based on the conviction that there exist a closer link between economic, social and cultural development and the realisation of human rights. The latest *Declaration on the Right to Development* adopted by the General Assembly on 4 December 1986. The second preambular paragraph of the *Declaration* states that a development is a comprehensive

economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".. Articles 1 and 2 of the Declaration define what the *United Nations* understands by development. Article 1 states that :

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.

2. The human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subjects to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Further, Article 2 provides that :

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

2. All human beings have a responsibility for development, individually and collectively ... .

These general provisions relating to development directly related to the situation of indigenous peoples but never implemented.

(b) Specific Provisions

Besides the general provisions, indigenous right to development have been specifically recognised in *UNESCO Declaration on Ethno-development, ILO Convention No. 169* and *Draft Declaration on Indigenous Rights* prepared by the UN *Working Group.*

(1) UNESCO Declaration on Ethno-development, 1981

The *UNESCO Declaration on Ethno-development*, 1981[119] recognises that "ethno-development is an inalienable right of Indian groups".[120] According to the *Declaration*, ethno-development is "the extension and consolidation of the elements of its own culture, through strengthening the independent decision making capacity of a culturally distinct society to direct its own development and exercise self-determination, at whatever level, which implies an equitable and independent share of power".[121] The declaration also expresses its conviction that ethnic group is "a political and administrative unit, with authority over its own territory and decision making powers within the confines of its development project, in a process of increasing autonomy and self-management".[122]

(2) ILO Convention No. 169

According to Article 7 of the ILO Convention No. 169 of 1989, the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. The improvement of the conditions of life and work and levels of health and education of the peoples concerned with their participation and cooperation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement. Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these shall be considered as fundamental criteria for the implementation of these activities. Government shall also take measure, in cooperation with the peoples concerned to protect and preserve the environment of the territories they inhabit.

(3) Draft Declaration on the Rights of Indigenous Rights

The right to development of indigenous peoples is also guaranteed in the UN *Draft Declaration on Indigenous Rights.*[123] Articles 19 to 24 are concerned with the right to development of the indigenous peoples. Article 23 of the *Draft* is much more specific which states that :

> Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economics and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Thus, the *UNESCO Declaration on Ethno-development*, ILO *Convention No. 169* and UN *Draft Declaration on Indigenous Rights* specially recognised the right to development of indigenous peoples. These instruments attempt to put an end to the outrages that indigenous peoples have suffered in the name of development. In this context, it may be recommended that the Indigenous Peoples should be given all possible opportunity to participate in the planning, implementation and evaluation of projects affecting their future and living conditions. Machinery and channels should be established and consolidated for consulation and negotiation between governments and Indigenous and Tribal Peoples on any programme that effects them directly.

(D) Rights of Indigenous Peoples Related to Self-Determination, Autonomy and Self-Government

(i) Indigenous Peoples' claims to Self-determination

The two great innovations in international law in the post-war years are decolonization and the development of an international law on human rights. The doctrine of self-determination[124] has played an important role in the process of decolonization and the emergence of many states in Asia, Africa and Latin America in the 20th century. At the sometime, many of these changes implemented in the name of self-determination i.e. non-self-governing territories becoming independent or

incorporating into independent entities and territorial transfers from one country to another, have contributed to terrorism, guerrilla warfare and transnational conflicts. Self-determination has also been used as a rationale for secessionist activities undermining the very concept of a world public order. Much of the civil strife throughout the world is due to the realisation of the so-called right to self-determination. Nevertheless, the principle of self-determination has been espoused under the *UN Charter* and the activities of the United Nations during the past five decades reveal a significant involvement of this world body towards the realisation of the right to self-determination. Indigenous Peoples, however, did not gain rights under decolonisation. The area that opened up slowly for them was a distinctive place in the law on human rights. Thus, the issue of self-determination has become the focal point in all discussions on the individual and collective rights of indigenous peoples. Indigenous communities and organisations consider self-determination ideologically and politically essential to controlling their destiny. In support of their claims to self-determination they maintain that they are not "ethnic minorities" or "social classes" but they are "nations" or "peoples" entitled to self-determination. In this context they refer to the *UN Charter,*[125] the *Human Rights Covenants,*[126] the *Friendly Relations Declaration*[127] and other International instruments[128] in which self-determination has been proclaimed as principle of universal application.

In the decades after the Second World War the right of self-determination was applied in the colonial context. Indigenous peoples urge that they are very much to be seen as victims of colonialism. It has been asserted that while a number of former colonies are now free and independent States, the colonial structure in which they live remains intact. They complain that in the present State structure their land, their livelihood, culture and distinctiveness are not secured from coercive dominant powers and they are still oppressed and ill treated in many parts of the world.[129] For indigenous peoples the right to self-determination is a necessary prerequisite of the realisation of all other human rights and peoples' right. The right of self-determination, they argue, is the only human right by which they can achieve equality, human dignity, freedom from discrimination and the full enjoyment of all human rights. Indigenous peoples consider that they are at the

mercy of the State in which they live and after centuries of "enlighted" government policies, they are still among the most severely disadvantaged groups in their States.[130] As a result, they doubt about the ability or desire of national governments to provide the indigenous peoples a better future. Moreover, government policies traditionally have focused on assimilation, a goal that indigenous peoples categorically reject. Indigenous peoples want to continue as distinct peoples, and for this end preservation and protection of their social and cultural identity is necessary.[131] The continuous onslaught on their social organisations as well as on their own traditions, lands and customs including local political authority by governments, all over the world, threatens their very existence as a separate and distinct community and make their lives miserable. Further, the non-recognition of the indigenous customary law by national legal system may lead to serious violations of individual human rights of members of indigenous communities. It has also far reaching implementations for the tribal and community government and for the political status of the indigenous government within the nation States.[132]

It is true that members of indigenous populations are, as many other individual, protected by applicable global or regional human rights covenants such as the *International Covenant on Civil and Political Rights, 1966,* but these protections are available generally to individual members of a community. Little wonder, indigenous peoples demand for the recognition of the individual as well as collective human rights for themselves and maintain that self-determination, self-government and self-development must form the basis in the elaboration of these rights. The denial of the right of self-determination to indigenous peoples, because indigenous peoples and indigenous territories have suffered a form of colonization trapping them within existing states, is no less discrimination, is no less an arbitrary and unjust denial of fundamental human rights.[133]

(ii) Principles of Self-determination

The self-determination idea is closely identified with *Woodraw Wilson,* who first used the term publicly in 1918. But the principle was emerged in 1945 at the *San Francisco Conference on the United Nations.* The idea of self-determination found its way

into Articles 1 and 55 of the *UN Charter* as the principle of "equal rights and self-determination of peoples". However, the drafter of the *Charter* did not define "self-determination" or identify who the "peoples" were.[134] The right of self-determination did not appear explicitly in the *Universal Declaration on Human Rights, 1948*, but it became the centerpiece of the *General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960*.[135] It also appeared in both of the UN Covenants on Human Rights, 1966.[136]

In fact, the right of self-determination has proved as one of the most successful and most frequently quoted principles of international law in the post-war era. In the era of decolonization it meant the right of colonial peoples to liberate themselves from colonial domination. The *International Court of Justice* endorsed the principle in this form in 1971 in its advisory opinion on *Namibia*[137] and in 1975 in its advisory opinion on the *Western Sahara*,[138] where it defined the principle as "the need to pay regard to the freely express will of peoples". For many years the majority of States in the *UN General Assembly* asserted that the expressed will of peoples to be free from colonial domination was the only face, the concept of self-determination had. However, the *General Assembly* in 1970 expanded the concept beyond anticolonialism. In its *Declaration on Principles of International Law Concerning Friendly Relations*,[139] the *General Assembly* said, among other things, that emergence into any political status freely determined by a people constitutes a mode of implementing the right of self-determination. Nevertheless, the *Declaration* disclaimed any intent to authorise or encourage the dismemberment of States. The *UN World Conference on Human Rights in 1993* said : "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of *Charter* of the *United Nations*."[140]

It is clear from the fact that the principle of self-determination can be granted not only in the colonial context, but it can also be granted in non-colonial situation. The principle of self-determination has not lost its validity with the end of Western colonialism. It is a fundamental principle of contemporary international law. The question is now what consequences will arise from this principle for indigenous peoples. The State practice,

however, has shown preference for the doctrine of *territorial integrity*[141] than the self-determination principle. The problem is that the principle of self-determination, if lent full validity as to permit excessive misuse so as to destroy the sacred doctrine of protection of *territorial integrity* of States, will lead to the fragmentation of and atomization of the World community by formation of a plethora of small States. Many existing States with indigenous peoples have emerged through the process of decolonization, a mode of exercising self-determination. These States, the one time beneficiaries of self-determination, are now the defenders of their *territorial integrity* and proposers of limited self-determination for indigenous peoples. Considering that the World community cannot disintegrate into thousands of individual units, the existing States have strongly opposed the extension of the right of full self-determination beyond the colonial context in general and in the case of indigenous peoples in particular.[142] Thus, the representatives of Canada and Norway, in the 75th working conference of ILO in 1988, viewed that the concept of self-determination is fundamentally applicable under foreign colonial rule and not to peoples in Independent States. Application of this principle into independent statehood would be incompatible with the framework of the UN and the *Charter*.[143] Against this line of argument, it has been maintained that the right of self-determination is a right of all peoples. Any restriction of the fundamental principle in international law of decolonization would be unjustified. With regard to indigenous peoples, they are very much to be seen as victims of colonialism, they have less relationships with State or government in which they live but rather a relationship with their land, the *mother Earth*.[144]

In the present scenario, on the one hand, governments are reluctant to recognise indigenous communities as "peoples" entitled to self-determination in the sense of independent statehood and membership of the *United Nations*, on the other hand, though indigenous organisations time and again have demanded the right of self-determination, they differ in their perceptions of the scope and the content of the right of self-determination in the context of indigenous peoples. Some groups assert that indigenous populations are "peoples" and they aspire to full independence and statehood in the internationally recognised sense of the term "self-determination". Thus, the *World Council of Indigenous Peoples*

submitted the straight forward formulation to the UN *Working Group on Indigenous Populations*, in the following words:

> All indigenous peoples have the right of self-determination. By virtue of this right they may freely determine their political status and freely pursue their economic, social, religious and cultural development.[145]

In contrast, other groups affirm another formulation of self-determination and they aspire the *internal* self-determination, i.e., establishment of autonomy or self-government only in specific areas, such as full control over land and resources. The *Indigenous Non-Governmental Organisation* submitted another set of principles to the same *UN Working Group*, in the following words :

1. All indigenous nations and peoples have the right of self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership and/or citizenship, without external interference.[146]

2. No State shall assert any jurisdiction over an indigenous nation or people, or its territory, except in accordance with the freely expressed wishes of the nation or people concerned.[147]

3. Indigenous nations and peoples may engage in self-defence against State actions in conflict with their right to self-determination.[148]

(iii) Aspects of Self-determination

Neither the General Assembly resolutions nor declarations provide the legal framework for the right of self-determination as these are simply recommendatory in nature. The two *International Convenants on Economic, Social and Cultural Rights and on Civil and Political Rights, 1966*, which have become the part of the international human Rights law fill this gap. These covenants are international treaties or agreements whose States parties i.e.

nations which have formally agreed to abide by the provisions by ratifying or acceding to these Covenants, undertake to respect, ensure and take steps for the enforcement and implementation of the rights inherent in the covenants. The provisions of the Covenants are binding on the States parties to them. For this reason, both the Covenants contain measures of implementation. Both the Covenants contain the right of Self-determination in identical language. Common Article 1 of both the Covenants States :

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development [Emphasis added].

2. The State Parties to the present Covenant, including those having responsibility for the administration of Non-self Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 1(1) of the Covenants speaks of "All peoples" right of Self-determination by which they can freely dispose of their natural wealth and resources and Article 1(3) imposes the responsibility on State to promote the realisation of the right to Self-determination. The term "All peoples" indicates that the right to Self-determination under the human rights Covenants is not merely a right of an individual human being, it is also a right of a group of individuals. But neither any of the General Assembly resolutions nor the human rights Covenants define the term "peoples". Both the General Assembly and the UN Human Rights Commission have evaded the question of defining the term "peoples". In this situation the issue, however, relates to the applicability of the right of Self-determination. To which territories will this right apply? Should it be confined to the non-self-governing territories? Or should it be extended to the independent sovereign territories as well? To answer this querry, a close examination of Article 1 of both the Covenants is require. This Article discusses about the two aspects of Self-determination, *external* and *internal*.[149]

(a) External Self-determination

Article 1(3) of the Covenants commits all States parties to respect and promote the right of self-determination. A close study of the provision reveals that the emphasis is clearly on the trust and other non-self-governing territories. They had suffered under the colonial rule for a long time. The most pressing and urgent matter was the achievement of independence by the peoples of those territories. For that reason Paragraph 3 specifically deals with this issue of self-determination in the colonial territories. To promote this right in these areas the drafters of the Covenant made even specific provisions like "elections and plebiscites" in Article 48(2) of the draft Covenant.[150] The provisions in the present Covenants also impose on contracting states parties having responsibilities for the dependent territories, the duty to grant self-determination to the people of these territories so that they could either form a new state or to associate themselves with an existing state. The other non-administering state parties are also obliged to assist in the promotion and realisation of the right of self-determination of the colonial peoples. Thus Article 1(3) refers to the *external* aspect of self-determination which is applicable to rust and other self governing territories.

(b) Internal Self-determination

Paragraph 1 of Article 1 of the Covenants refers to the *internal* aspect of self-determination when it states that "all peoples have the right of self-determination". Here the reference is not only to the peoples of dependent countries, but to the peoples of sovereign states as well. So the *internal* aspect of self-determination is universally applicable to *all* people. Under *internal* self-determination these peoples are to enjoy the right to have the form of government they like through free and fair elections based on the universal adult franchise, and to determine the social, economic and cultural policies of the state freely. Art. 1(1) conveys two ideas. Firstly, the choice of domestic political institutions must be ascertained by the peoples themselves through free and fair elections without any sort of external compulsion or interference. Secondly, it necessitates other related rights enshrined in other provisions of the Covenant such as the freedom of speech and expression (Art. 19), the right of peaceful assembly (Art. 21), the freedom of association (Art. 22), right to vote, and to be elected

[Art. 25(b)] and more importantly, right to take part in the conduct of public affairs, directly or indirectly through chosen representatives [Art. 25(a)]. These rights are the corollaries of *internal* self-determination. Wherever these rights are recognised and respected, the people enjoy the right of *internal* self-determination and whenever they are trampled upon, it is infringed. Of course these rights are not absolute as Covenant itself and constitutions of the member states rightly impose reasonable limitations on them.

So, it can be safely concluded that under the Covenants, while *internal* self-determination is universally applied to all people, whether living in the colonial territories or independent sovereign states, *external* aspect of self-determination is applicable to the trust and other non-self-governing territories. It applies to the colonial situation and not to the people living in the independent, sovereign states like India. The *external* self-determination can thus be identified essentially as the liberation of peoples from colonial rule and from alien subjugation, domination and exploitation. While the *external* aspect, played a key role in ending colonialism through independence, the *internal* aspect of self-determination is closely linked to the realisation of the human rights enshrined in the human rights instruments, like, *International Covenant on Civil and Political Rights* within the State's structure/constitutional framework of the State. Thus the *internal* aspect of self-determination provides wide variety of autonomous decision making processes.

(iv) Self-determination and Indigenous Peoples

It is clear from the fact that there are two aspects of the right of self-determination: *external* and *internal*. While the first aspect of self-determination entails independence, statehood and secession; the latter aspect of the concept refers to a wide variety of autonomous decision making arrangements short of full independence. The application of the first aspect of the right to self-determination in case of indigenous peoples remains highly problematic. In reference to indigenous groups, the ILO *Convention No. 107* of 1957 ruled out connotations of *external* self-determination of indigenous groups. Article 2 (1) discarded the right to *external* self-determination for indigenous populations

when it affirmed that :"Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries." This approach, however, is changed subsequently. ILO's revised *Convention No. 169* of 1989 requires the development of "special measures" to safeguard indigenous "persons, institutions, property, labour, cultures and environment" (Art. 4.1) and specifies that the measures be consistent with "the freely expressed wishes of the peoples concerned" (Art. 4.2). Also, the Convention requires that consultations with indigenous peoples" be undertaken, in good faith... with the objective of achieving agreement or consent" (Art. 4.6). The Convention also upholds the right of indigenous peoples to "retain their own customs and institutions" (Art. 8.2) and requires that "the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected (Art. 9). Thus the *Convention No. 169* requires the protection of Indigenous Peoples by their own institutions and means. The convention, however, not recognised the right of Self-determination of Indigenous Peoples. Hence, the term "Peoples" is used in the Convention with a reservation that the use of the term "Peoples" do not involve the recognition of the right of Self-determination of Indigenous Peoples.[151] Thus the right of external self-determination has not been recognised under ILO Conventions (Nos. 107 and 169).

Some indigenous groups argue that Article 27 of the *International Covenant on Civil and Political Rights, 1966*, and other provisions of the same covenant and the *International Covenant on Economic, Social and Cultural Rights, 1966*, recognise the right of *external* self-determination of indigenous peoples.[152] Article 27 states that:

> In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 27, however, is concerned with minorities characterised by their ethnic origin, religion or language. The main thrust of the provision is to ensure that State authorities do not interfere with the daily life of the minority (it amounts to protection against State measures). The Article guarantees that the minority in question has a right to maintain it own culture, exercise religious practices and use its own language within the minority population, without outside interference. The indigenous communities maintain their claims that the question of the rights and protection of indigenous peoples is closely related to the legal status of minorities as they are in minority in States.[153] The *travaux preparatories* of Article 27 demonstrates that the question of positive measures was discussed in some detail during the negotiations on the actual wording of Article 27. The prevailing opinion in the *Human Rights Commission* at that time was that no obligation to provide positive measures, such as building and maintaining special schools for minorities children, existed.[154] Article 27 recognises, however, that it may be relevant to give minorities preferential treatment. It must be admitted that the scope of Article 27, as has been conceived, is some what limited. The main function of the provision is primarily to act as a barrier to under State interference with the "internal life" of the particular minority. The subsequent jurisprudence of UN *Human Rights Committee* has not meant a fundamental break away from the original intent of the states parties.[155] The UN Human Rights Committee considered the issue in cases of *Lubicon Lake Band* v. *Canada*[156] in 1984, and *Kitok v. Sweden*[157] in 1985. In these cases the *Committee* introduced an interpretation of the concept of culture in Article 27 which implied an extension of this concept to cover traditional economic activities. The *Commission* also held: "Article 27 can be said to cater for certain classical human rights problems. Solutions to the specific problems of indigenous populations cannot, however, be said to be exhausted with the adoption of this provision. Subsequent experience and ensuring legal developments bear testimony to that" but the Committee did not over rule the original intentions of the States parties.

The *Inter American Commission of Human Rights* (IACHR) of the *Organisation of American States* is the only international body to have formally, through its dictum, addressed the issue whether indigenous peoples have the right of self-determination.[158] In the

context of Miskito Indian complaints of human rights violations by Nicaragua in 1981 and 1982, the IACHR considered." Whether or not ethnic groups also have additional rights to those set forth in Article 27 of the *Covenant on Civil and Political Rights, 1966*, particularly the right of self-determination."[159] The Commission concluded thus:

> The present status of international law does recognise observance of the principle of self-determination of peoples, which it considers to be the right of a people to independently choose their form of political organisation and to freely establish the means it deems appropriate to bring about their economic, social and cultural development. This does not mean, however, that it recognises the right to self-determination of any ethnic group as such.[160]

Citing, *inter alia* UN General Assembly resolutions 1514(XV)[161] and 2625 (XXV),[162] the IACHR went on to note that the exercise of the right of self-determination could never justify disrupting the *territorial integrity* of a sovereign State.

It follows from the above that governments have adopted negative attitude towards indigenous demands for *external* self-determination. Apart from the fears that if the right is guaranteed to any ethnic or indigenous minority it will give rise to fragmentation and atomization of States leading to anarchy and chaos, the fact that they are very small in many countries in which they live have led States not to concede the right of full blows of self-determination to the indigenous communities in the sense of creating independent statehood or secession. The representative of Australia pointed out that :

> Since aboriginals comprise less than one percent of the total population, are predominantly rural and scattered throughout Australia, and were by tradition organised effectively only into small local limits, their failure to become a political force is not surprising. Political awareness amongst Aboriginal is however, increasing rapidly.[163]

Thus, for most of these peoples there is no immediate prospect of creating independent State. Nevertheless, the World

wide struggles of indigenous peoples for self-determination have made concrete gains in the area of *internal* Self-determination. The increasing awareness of indigenous issues over the years has brought about a significant change in the perceptions of governments with regard to demands for indigenous self-determination. Governments now appear to be willing to provide for self-government, self-development and autonomy for these peoples under their own legal systems.[164]

The survey of domestic legal regimes reveals that domestic treatment of indigenous peoples falls into two categories. The first approach recognises a special legal status of the indigenous inhabitants which is intended to protect them and place them from certain civil obligations, but which also limits them enjoyment of certain rights. In the second group, the State allows indigenous inhabitants all of the rights and obligations of other nationals of the States, but it also takes into consideration the special deeds of indigenous populations as is done for other disadvantaged groups.[165] In some countries cultural autonomy has been granted, whereas in some other countries territorial autonomy of one or other form has been accorded to indigenous populations. The territorial autonomy arrangements vary from the *reservation* type as is case of United States of America,[166] some African countries and the Philippines; to *Comaraca* in Panama;[167] to a *Home Rule* type[168] as in the case of Denmark and Norway; to Brazilian *Self-governance;*[169] and to *Autonomous District Council* in a growing number of countries, for example, in India.

It is not possible to discuss all the domestic treatments for indigenous self-governance here. Nevertheless, the Indian arrangements are discussed below which will help us to understand the relationship between the tribal people and central and provincial governments with this kind of arrangements. In India, various types of autonomous arrangements have been established under the Constitution as well as State Legislations for the self-governance by the tribals. Under the Sixth Schedule to the Constitution, nine Autonomous District Councils have been working as the model of tribal self-governance in the North-east India, viz, *North Chachar, Karbi Anglong* (in Assam); *Khasi Hills, Jaintia Hills, Garo Hills* (in Meghalaya); *Tripura Tribal Areas* (in Tripura); *Chakma, Lakher, Lai* (in Mizoram). In 1988, for the tribals

of Darjeeling, the West Bengal State Legislature has passed an Act and established the *Darjeeling Gorkha Hill Council* as an autonomous unit.[170] Similarly, the *Bodoland Autonomous Council* took form under an enactment of the Assam State Legislative Assembly, in 1993, for the Bodo plain tribes in Assam by which the executive functions including formulation of policies in respect of 38 subjects were transferred into the council giving substantial autonomy to the inhabitants of the Council for the purpose of realisation of their aspirations so that they can achieve social, economic, educational, ethnic and cultural advancement.[171] In order to achieve the economic emancipation, cultural resurgence, political self-determination and all-round development of tribals of Jharkhand area, the *Jharkhand Area Autonomous Council Act, 1994* was passed by the Bihar State Assembly. As a result, *Jharkhand Areas Autonomous Council* have been established covering 18 districts of Chotanagpur and Santal Pargana. Comparing *Jharkhand* with the Autonomous Councils of *Gorkhaland* and *Bodoland*, all three were conceived under the State Legislations. The *Autonomous District Councils* in the North-east India have been established under the Constitutional model enshrined to the Sixth Schedule to the Constitution of India. But whatever the model or form is adopted, what is essential is the rights that are guaranteed by Constitutions or laws of Legislature or Executive proclamations (for example, presidential proclamation), and the structures and processes that facilitate and enable the enjoyment of these rights. The degree of autonomy of indigenous peoples in relation to the State is influenced to a large extent by fiscal autonomy and the quality of administrative relations between indigenous government and State.

(v) Internal Self-determination, Autonomy or Self-government under International Law

The right to *internal* Self-determination of indigenous peoples has not been categorically recognised in any international convention as yet. However, the international consensus, as reflected in instruments discussed below, appears to favour recognition of the right of self-determination of indigenous peoples in the sense of autonomy or self-government. It is now being increasingly recognised that the right to *internal* self-determination is a basic prerequisite of the realisation of all human rights and

fundamental freedoms of indigenous peoples. If certain forms of genuine autonomy or self-government or self-management are granted to them the implementation of the right of self-determination will be served.

As noted earlier that the international concensus in favour of the recognition of the indigenous people's right to *internal* self-determination is the result of continuous efforts of the Non-governmental Organisations (NGOs). In 1981, the *International NGO Conference on Indigenous Peoples and Land*[172] adopted a number of principles regarding the right of self-determination of indigenous peoples. The conference affirmed: "(a) Indigenous nations, peoples and groups were neither minorities nor social classes but peoples entitled to self-determination; (b) The States concerned should recognise a guarantee of land rights on a territorial basis. Only the indigenous peoples had the right to decide on their own forms of land holding and use within their territories, in accordance with the freedom to propagate their own culture. Land rights including ownership of all natural resources; (c) Land rights and the right to Self-determination were inseparable". It would appear that though the conference emphasised the need to protect the land right, and cultural rights of indigenous peoples, it did not recognise full independence of such peoples.

The UN seminar, held at Managra Nicaragua, in 1981,[173] declared for the first time the indigenous people's right to *internal* Self-determination in the form of autonomy or self-government. The seminar went on to state that the right of self-determination "in the largest sense of its 'external' manifestations meant the right of statehood, also including the right to choose various forms of association with other political communities."[174] The seminar, however, admitted that the right of self-determination "also arose on an *internal* level of national society, where a people or group having a defined territory might be autonomous in the sense of having a separate and distinct administrative structure and judicial system determined by, and internal to, themselves....."[175] The Seminar recommended that the self-determination, in its many forms, may be recognised for the enjoyment of fundamental rights of indigenous peoples. The seminar's recommendation runs as follows:

> Self-determination in its many forms was the basic precondition to the possibility for indigenous populations to enjoy their fundamental rights and to determine their future and preserve, develop and transmit of future generations their ethnic specificity.[176]

Similarly, the Conclusions, Proposals and Recommendations of the *UN Study of the Problem of Discrimination against Indigenous Populations*[177] expressed its conviction that "the right to self-determination exists at various levels and includes economic, social, cultural and political factors. In essence, it constitutes the exercise of free choice by indigenous peoples, who must, to a large extent, create the specific content of this principle, in both its internal and external expressions, which do not necessarily include the right to secede from the state in which they live and to set themselves up s sovereign entities. This right may in fact be expressed in various forms of autonomy within the State...".[178] The *Special Repporteur* observed :

> Self-determination, in its many forms, must be recognised as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future.[179]

In 1991, the *Nuuk Meeting of experts* held in Nuuk, Greenland,[180] after reviewing the experience of countries and clarifying a number of important points relating to self-determination of indigenous peoples concluded that : "self determination of peoples is a precondition for freedom, justice and peace both within States and in the international community."[181] The meeting also admitted the fact that : "Indigenous peoples have the right to self-determination as provided for in the International covenant on Human Rights and Public international Law and as a consequence of their continued existence as distinct peoples".[182] The experts in the meeting, however, formulated that: "This right shall be implemented with due consideration to other basic principles of International Law. An integral part of this is the inherent and fundamental right to autonomy or self-government. Self-government, self-administration and self-management of indigenous peoples constitute elements of political autonomy. The

realisation of this right should not pose to threat the territorial intensity of the State.[183] Furthermore, "for indigenous peoples, autonomy and self-government are prerequisites for achieving equality, human dignity, freedom from discrimination and full enjoyment of all human rights.... for the survival and further development..."[184]

Finally the *Draft* UN *Declaration on the Rights of Indigenous Peoples* prepared by the *UN Working Group* recognises the right of *internal* self-determination of indigenous peoples in the sense of autonomy or self-government. The fourteenth precambular paragraph states: "Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development". The fifteenth preambular paragraph also affirms that: "Bearing in mind that nothing in this declaration may be used to deny any peoples their right to self-determination". The general right of self-determination of indigenous peoples is incorporated under Article 3 of the *Draft Declaration* which proclaims: "Indigenous peoples have in right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Evidently, Article 3 has been drafted with the terms of Article 1 of the *International Covenants on Human Rights, 1966*, and Paragraph 1(1) of the principle 5 of the *UN Declaration on Friendly Relations, 1970*. But what should be the specific form and nature of indigenous self-determination has been formulated under Article 31 which reads : "Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including cultures, religion, education, information, media, health, housing, employment, social welfare, economic activities, Land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions." Thus the emerging trend of the right of Self-determination of Indigenous Peoples is in favour of *internal* Self-determination in the specific form of autonomy or self-government.

The question of indigenous self-determination is now a worldwide concern and firmly placed on the UN agenda in the 1990s. The right of self-determination is regarded as a prerequisite to the full enjoyment of all human rights, including individual human rights and there is a critical connection between the historical denial of indigenous right of self-determination within domestic and international legal systems and racial discriminations. Just as human rights are interdependent, so too are various forms of domination and oppression. On the one hand, a number of former colonies have exercised their right of self-determination and independence, on the other hand, there are nearly 300 million of indigenous individuals, scattered across the world, for whom the colonial structure is not abolished. They are the poorest, most discriminated against, vulnerable and disadvantaged group of society. For them the enjoyment of human rights is still a dream. They are also on the fore-front of environmental degradation, although indigenous cultures themselves are models of most successful, sustainable and environmentally friendly methods of resource management and land use.

For most of these peoples there is no immediate prospect of creating independent States because their individual members are small in numbers and their lands have been enclosed within the boundaries of bigger States. In view of this unique situation the solution to their problem lies in the promotion and protection of individual and collective human rights of indigenous peoples within the framework of existing States and there is increasing recognition of indigenous peoples' right to self-determination at both international and domestic levels. In this context self-determination of Indigenous Peoples means autonomy, self-government or self-development within states' structure. It need not be emphasised that the right to self-determination is an evolving and expanding concept. While in the first stage of its development it appears as the right to independence of Western colonies and non-self-governing territories in the post decolonization era, subsequently it manifested itself in the global entitlement of all peoples to have protection of collective human rights and the free choice of government, namely, democracy, where the human rights are guaranteed under the rule of Law. In this version the right to self-determination means *internal* self-

determination of peoples to have a self-rule and a responsive government, mutual respect between diverse religious, ethnic and linguistic groups within existing States and a fundamental pluralistic democracy.

Self-determination so construed is also available to ethnic or indigenous minorities or other sub-national groups seeking self-rule and self-development on the basis of their distinctiveness. If the policy of self-rule and development for indigenous peoples rights and protection is adopted and certain forms of autonomy and political association suitable for indigenous peoples inhabiting a sufficiently well defined territory are guaranteed under the law and the constitution of the State concerned, the implementation of the right of *internal* self-determination will be served. As self-determination in this sense does not conflict with the principle of *territorial integrity* of existing States but reinforces legitimacy of the State authority, it needs to be supported by the international community.

The right to self-determination as defined in the *Draft Declaration* reflects one of the legitimate aspirations of the indigenous peoples to greater autonomy under the *internal* regime, in the sense of self-governance and self-management. The exercise of such autonomy would enable indigenous communities and nations to be governed by their own laws, freely to determine the forms and conditions of their own development and to assume their obligations as basic factors contributing to the consolidation of national unity and the maintenance of international peace and security.

It has emerged from the foregoing discussion that the rights of indigenous peoples related to land, resource, culture, language, education and development are well recognised within the human rights framework at international level. The promotion and protection of these human rights of indigenous peoples are closely linked with the right of self-determination. Because the right of self-determination is regarded as a prerequisite to the full enjoyment of all human rights. This right of self-determination can be achieved or realised either by *external* or *internal* form. For indigenous peoples, however, there is no immediate prospect of enjoyment of *external* self-determination in the sense of creating

independent statehood or secession, because their individual members are small in number. As a result the right of *internal* self-determination in the form of autonomy or self-government is the possible form/process for the realisation of the rights of Indigenous Peoples. In this context, in addition to the recommendations given in respect to the elaboration of the rights of Indigenous Peoples at the appropriate places, following measures need to be taken to extend the protection of the rights of Indigenous Peoples :

1. The International Covenant on Civil and Political Rights should be amended so as to include a specific provision on Indigenous Peoples' rights and special measures should be adopted to rectify past injustice caused to Indigenous Peoples.

2. The question of Indigenous Peoples should be placed permanently on the agenda of the United Nations with a view to further institutional development.

3. The United Nations General Assembly has proclaimed an international decade of the world's Indigenous Peoples, beginning from December 1994. Action oriented programmes should be chalked out in partnership with Indigenous Peoples for this purpose.

4. Advisory services and technical assistance programmes within the United Nations system should respond positively to requests from States for assistance which would be of direct benefit to Indigenous Peoples.

5. States should take necessary steps to harmonise national laws and regulations with respect to the status of Indigenous Peoples and their international responsibilities and duties in this regard.

6. States should promote legislation to guarantee the exercise of Indigenous Rights and to enhance the efficiency and capability of the competent national authorities responsible for ensuring the effective protection of these rights.

NOTES AND REFERENCES

1. Andree Lawrey, "Contemporary Efforts to Guarantee Indigenous Rights under International Law", *VJIL* 23 (1990) at p. 706. *see* also E.R. Mbaya, "Relation between individual and collective Human Rights : The Problem of Rights of Peoples", *LS* 4 (1992) : 7-32.

2. Today, there are approximately 70 international instruments dealing specifically with human rights issues.

3. *see, UN Charter*, Article 1, Para 3. Article 1 includes, as one of the Organisation's fundamental purposes, "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.....".

4. The *Universal Declaration of Human Rights*, was adopted by the UN General Assembly on December 10, 1948 to serve as "a common standard of achievement for all peoples and all nations"(Preamble).

5. Article 27 of the *International Covenant on Civil and Political Rights* (adopted by the UN General Assembly on December 16, 1966, entered into force on January 3, 1976), provides that : "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

6. Article 1 of the *UN Charter* refers to "the principle of equal rights and self-determination of peoples". The concept is developed in many UN resolutions and other instruments, including Article 1 of both the *International Covenant on Civil and Political Rights, 1966*, and the *International Covenant on Economic, Social and Cultural Rights*, (adopted by the UN General Assembly on December 16, 1966, entered into force on March 23, 1976). Article 1 of both Conventions provides that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development..... The States parties to the present Covenant..... shall promote the realisation of the right of self-determination, and shall respect that right.....".

   The ICJ endorsed the right of self-determination in the context of decolonization in its *Namibia* advisory opinion :

"the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them.... The ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain..... the *corpus iuris gentium* has been considerably enriched, and this the Court may not ignore."

1971 ICJ 9, 31-32 (Advisory Opinion). The ICJ quoted this passage with approval in its *Western Sahara* opinion, 1975 ICJ 6, 32 (Advisory opinion).

7. In this connection several Human Rights instruments are relevant to indigenous peoples. These instruments include, *inter alia*, *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted on 9 Dec. 1948, entered into force on 12 Jan. 1951), *Slavery Convention* (adopted on 7 Dec. 1953, entered into force on 7 July 1955), *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (adopted on 7 September 1956, entered into force on 30 April 1957), *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted on 21 Dec. 1956, entered into force on 4 Jan. 1969), *International Covenant on Civil and Political Rights* (adopted on 16 Dec. 1966, entered into force on 4 Jan. 1976), *International Covenant on Economic, Social and Cultural Rights* (adopted on 16 Dec. 1966, entered into force on 3 Jan. 1976), *Convention against Discrimination in Education* (adopted on 14 Dec. 1960, entered into force on 22 May 1962) *American Convention on Human Rights* (adopted on 22 Nov. 1969, entered into force 1978).

8. These Conventions and Recommendations were adopted by the ILO Conference at its fourteenth session (Geneva 10-18 June 1930), its twentieth session (Geneva 4-24 June 1936) and its twenty-fifth session (Geneva 8-28 June 1939) and are : the *Forced Labour Convention, 1930* (No. 29); the *Forced Labour (Indirect Compulsion) Recommendation, 1930* (No. 35); the *Forced Labour (Regulation) 1930. see*, International Labour Office. *Conventions and Recommendations adopted by the International Labour Conference, 1919-1966* (Geneva, 1966).

9. Martinez Cobo study. *Chapter II*, UN Doc. E/CN.4/Sub. 2/1982/2/Add. 1, pp. 9-26. *see* also, Mario Ibarra, "Annotations for a Chronology of Indigenous Peoples in International Law", *SA* 43 (1993) at p. 51.

10. *International Labour Office. Indigenous Peoples : Living and Working Conditions of Aboriginal Populations in Independent Countries*, Geneva (1953).

11. Ibid., at p. 89.

12. For the text, *see*, International Labour Office. *Convention and Recommendations 1919-1966*, op. cit.

13. Angola, Argentina, Bangladesh, Belzium, Bolivia, Brazil, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Egypt, EI Salvador, Ghana, Guinea-Bissan, Haiti, India, Iraq, Malawi, Mexico, Pakistan, Panama, Paraguay, Peru, Portugal, Syria and Tunisia.

14. Preamble of the *ILO Convention No. 107* of 1957.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. Hurst Hannum. "New Developments in Indigenous Rights". *VJIL* 28 (1988) at p. 633.

20. Russel Lawrence Barsh. "Revision of ILO Convention No. 107". *AJIL* 81 (1987) at p. 81.

21. *see*, International Labour Office. *International Labour Conference, 76th Session 1989 : Partial Revision of the Indigenous and Tribal Population Convention 1957 (No. 107).* Geneva (1989) at Para. 46; *see* also, Natan Lerner, "The 1989 ILO Convention on Indigenous Populations : New Standards". *IYHR*, 20 (1990), pp. 223-241.

22. Statement by Sharon Venne to the 1989 ILO Plenary, extract from ILO Provisional Record No. 31, submitted to the seventh session of the *UN Working Group on Indigenous Populations* in 1989, *see*, UN Doc. E/CN.4/Sub. 2/1989/36 at p. 11.

23. Erica-Irene A. Daes. *Reports of the Working Group on Indigenous Populations on its Eighth Session.* UN. Doc. E/CN.4/Sub. 2/1990/42 at Para. 47.

24. UN fact sheet No. 9 at p. 5.

25. GA Res. 275 (111) (May 11, 1949).

26. Martinez Cobo study, *Chapter-I : Measures adopted by the United Nations. see*, UN. Doc. E/CN.4/Sub. 2/476/Add. 4, pp. 25-26.

27. Hernan Santa Cruz. *Racial Discrimination.* United Nations Publication, New York, 1971.

28. Ibid., Para 1102.

29. Quoted in Mario Ibarra, "Traditional Practices in Respect of the Sustainable and Environmentally Sound Self-development of Indigenous Peoples". *Background paper, see* E/CN. 4/Sub. 2/1992/31/Add. 1 at p. 2.

30. One of the most comprehensive surveys in recent years of the status of indigenous communities in all regions of the world is *UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' Study of the Problem of Discrimination against Indigenous Populations*, UN. Document Symbol. E/CN. 4/Sub. 2/1986/7 and Adds. 1-4 (1986) (Jose R. Martinez Cobo, Special Rapporteur) (hereinafter referred to as Martinez Cobo Study). These five volumes are reprints of a series of partial reports issued as documents of the *UN Sub-Commission on Prevention of Discrimination and Protection of Minorities* from 1981-1984.

31. *see*, UN Doc. E/CN. 4/Sub. 2/1983/21/Add. 8.

32. Sub-Commission's Res. 1984/35A, 4th Preambular Para.

33. Ibid., 1985/22/Para 4(a).

34. Martinez Cobo Study : *Conclusions, Proposals and Recommendations*. UN. Doc. E/CN. 4/Sub. 2/1983/21/Add. 8 at Para 624.

35. Ibid., at Para. 625.

36. Ibid., at Para. 580.

37. Ibid., at Para. 581.

38. Ibid., at Para. 513.

39. UN fact sheet No. 9 at p. 3.

40. The report of the conference is reprinted in the November 1977 issue of the *American Indian Journal*.

41. UN, Doc. A/CONF. 92/40, at 14 (1978).

42. The report of the conference was published by the World Federation of Democratic Youth (1981).

43. *'UN Sub-Commission on Prevention of Discrimination and Protection on Minorities'* Resolution 2 (XXXIV) (Sept. 8, 1981).

44. UN Human Rights Commission's Resolution 1982/19 (Mar. 10).

45. ECOSOC Resolution 1982/34 (May 7).

46. Five members are : Mrs. Erica-Irene A. Daes (Chairman/ Rapporteur) (from Greece), Ms. Judith Sefi Attah (from Nigeria), Mr. Tian Jin (from Chaina), Mr. Mignel Alfonso Martinez (from Cuba) and Mr. Danilo Turk (from Yugoslavia).

47. UN fact sheet No. 9 at p. 7.

48. Erica-Irena A. Daes. *Report of the Working Group on Indigenous Populations on Its Fifth Session 1987. see*, UN Doc. E/CN. 4/Sub. 2/1987/22 at p. 3-5.

49. Ibid., Report of Seventh Session (1989), *see*, UN Doc. E/CN. 4/ Sub. 2/1989/22 at p. 7.

50. Ibid., Report of fourth session (1985), *see*, UN. Doc. E/CN. 4/ Sub. 2/1985/22 at p. 4.

51. Sub-Commission's Resolution 1984/35B (Aug. 27).

52. Human Rights Commission's Resolution 1985/21 (Mar. 11).

53. Sub-Commission's Resolution 1985/22 (Aug. 29).

54. For the text of the Draft, *see, Report of the Working Group on Indigenous Populations on Its Eleventh Session*. UN. Doc. E/CN. 4/ Sub. 2/1993/29 at p. 50-60.

55. For the issue of Rights of Indigenous Peoples, *see*, J.K. Das. *Indigenous "Peoples" Sustainable Development and Human Rights*, Ganga Kaveri, Varanasi (1997); J.K. Das, "Indigenous and Tribal People : The Position in International Law", *TUI* 4 (1995) pp. 45-69; W. Michael Reisman, "Protecting Indigenous Rights in International Adjudication", *AJIL* 89(2) April 1995 pp. 350-361; Naorem Sanajaoba, "The Rights and Status of the Indigenous Peoples", *Seminar Paper* (1994).

56. Martinez Cobo study. *Chapter XVII : Land*. UN. Doc. E/CN. 4/ Sub. 2/1993/Add. 4 at p. 4.

57. Hans-Joachim Heintez, "International Law and Indigenous Peoples", *LS*, 45 (1992) at p. 52 *see* also Anthony Mason, "The Rights of Indigenous Peoples Lands once part of the old dominions of the crown", *International and Comparative Law Quarterly* 46 (1997) : 812-830.

58. Summary of Resolutions of Workshops on Indigenous and Tribal Peoples' Struggle for Right of Self-determination and Self-government in India. *see*, UN. Doc. E/CN. 4/Sub. 2/Ac. 4/1994/ 4/Add. 1 at p. 6.

59. Erica-Irene A. Daes. *Report of the Working Group on Indigenous Populations on Its Fourth Session in 1985* (Hereinafter referred to as Working Group's Report). UN. Doc. E/CN.4/Sub.2/1985/22/ Annex. III. WCIP Declaration, Principle 9, 10 and 12. The NGO Principles submitted to the same session (same UN. Doc. Annex. IV, Principles 4, 6, 7) advanced a similar position as follows :

    (a) Indigenous nations and peoples are entitled to the permanent control and enjoyment of their aboriginal ancestral-historical territories. This includes surface and subsurface rights, inland and coastal waters, renewable and non-renewable resources and the economies based on these resources.

    (b) Discovery, conquest, settlement on a theory of *terra nullius* and unilateral legislation are never legitimate bases for States to claim or retain the territories of indigenous nations or peoples.

    (c) In cases where lands taken in vilation of these principles have already been settled, the indigenous nation or people concerned is entitle to immediate restitution, including compensation for the loss of use, without extinction of original. Indigenous peoples' desire to regain possession and control of sacred sites must always be respected.

60. Martinez Cobo study. *Conclusions, Proposals and Recommendations.* UN. Doc. E/CN. 4/Sub. 2//1983/21/Add. 8 at Para. 197.

61. UNESCO Courier, January 1989.

62. Julian Burger, *Report from the Frontier : The State of World's Indigenous Peoples.* London (1987) at p. 14.

63. Guy A. Kouassigan. *L'homme et la terre,* Paris 1966, at p. 11, quoted in Mario Ibarra, "Traditional Practices in Respect of the Sustainable and Environmentally Sound Self-development of Indigenous People". *Background Paper.* UN. Doc. E/CN. 4/Sub. 2/1992/31/ Add. 1 at p. 24-25.

64. Independent Commission on International Humanitarian Issues. *Indigenous Peoples : A Global Quest for Justice.* London (1988) at p. 45.

65. Ibid.

66. Hurst Hannum, "New Development in Indigenous Rights", *VJIL* 28 (1988) at p. 669.

67. 27 Countries have ratified *ILO Convention No. 107* of 1957 : Angola, Argentina, Bangladesh, Belgium, Bolivia, Brazil, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Mexico, Pakistan, Panama, Paraguay, Peru, Portugal, Syria and Tunisia.

68. For the text of the *Draft*, *see*, *Report of the Working Group on Indigenous Populations on Its Eleventh Session*. UN. Doc. E/CN. 4/ Sub. 2/1993/29 at pp. 50-60. The *Draft* is approved by the Sub-Commission in 1997 and presently it is under the consideration of the *Commission of Human Rights*. The Draft is expected to be submitted to the ECOSOC soon and thereafter to be submitted for proclamation by the *UN General Assembly*.

69. Martinez Cobo study. *Conclusions*, op. cit. at Para. 380.

70. Martinez Cobo study. *Chapter XV : Culture and Cultural, Social and Legal Institutions*, UN. Doc. E/CN. 4/Sub. 2/1983/2/Add. 3 at Para. 20.

71. Working Group's report on its 11th session. UN. Doc. E/CN. 4/ Sub. 2/1993/29 at p. 25.

72. Martinez Cobo study. *Conclusions*, op. cit. at Para. 121.

73. Haus-Jachim Heintze. *International Law*. op. cit. p. 56. *see* also K.L. Mehra, "Indigenous Biodiversity Rights", *Mainstream*, October 7 (1995) : 18-22.

74. UN Report. UN. Doc. E/CN. 4/Sub. 2/1982/2/Add. 7 at p. 7.

75. Erica-Irene Daes. *UN Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*. UN. Doc. E/CN. 4/Sub. 2/1993/28 at p. 10.

76. In 1991 UN Sub-Commission appointed Special Rapporteur Ms. Erica-Irene Daes for a separate study on Cultural and Intellectual property of indigenous peoples. For the report of the study, *see*, UN. Doc. E/CN.4/Sub.2//1993/28. *see* also Heinz Hert Perusse, "The International Division of Labour and the Protection of Intellectual Property Rights", *LS*, 5 (1995), pp. 86-100.

77. Working Group's report of 11th Session. op. cit. at p. 31.

78. Ibid., at p. 35.

79. Martinez Cobo study. *Chapter XIV : Language*, UN. Doc. E/CN. 4/Sub. 2/476/Add. 6, pp. 4-7.

80. UN Under-Secretary-General for Human Rights, "Opening Statement by the representative of the United Nations", *see, Report of the UN Technical Conference on Self-development of Indigenous Peoples*. UN. Doc. E/CN. 4/1992/42/Add. 1, p. 3.

81. Principle 22 of the *Rio Declaration on Environment and Development 1992, see UN Chronicle*, Sept. 1992, at p. 66.

82. *World Bank Operational Manual : Operational Directive* 4.2, September 1991. *see*, generally, Rodolfo Stavenhagen. *The Ethnic Question : Conflicts, Developments and Human Rights.* UN University Press, Japan, 1990 at p. 61.

83. Martinez Cobo study. *Conclusion*. op. cit. at Para. 122.

84. UNESCO. *Cultural Rights and Human Rights*, Paris, 1970 at pp. 123-25.

85. *UN Study on Protection of the Cultural and Intellectual Property of Indigenous Peoples*. UN. Doc. E/CN. 4/Sub. 2/1993/28 at pp. 29-37.

86. ILO *Convention No. 169* entered into force in 1991.

87. For the text of the *Draft, see*, UN. Doc. E/CN. 4/Sub. 2/1993/29 at pp. 50-60.

88. Martinez Cobo study. *Language*, op. cit. at p. 2.

89. Rodolfo Stavenhagen. *The Ethnic Question*. op. cit. at p. 108.

90. Ibid.

91. Martinez Cobo study. *Conclusions*, op. cit. at Para. 121.

92. Ibid.

93. Martinez Cobo study. *Language*, op. cit. at Paras. 40-46.

94. *Spanish* in Argentina, Bolivia, Chile, Colombia, Costa-rica, Ecudor, EI Satvador, Panama, Paraguay, Peru, Venezuela; *English* in Australia, Guyanma, New Zealand, USA, Canada; *Portugese* in Brazil, *Dutch* in Suriname.

95. *English* and *Bengali* are used in Bangladesh; *English* and *Hindi* and *other languages* in India; *English* and *Malaya* in Malaysia.

96. *Finish* in Finland, *Japanese* in Japan, *Norwegion* and *Swedish* in Sweden.

97. UNESCO, *Final Document : Meeting of experts on the use of the mother tongue and the preparation of alphabets for literacy*. Ibadan (1964).

98. Martinez Cobo study. *Conclusions*, op. cit. at Para. 122.

99. Ibid., at Para. 123.

100. Martinez Cobo study. *Chapter XIII : Education*. UN. Doc. E/CN. 4/Sub. 2/1983/21/Add. 2.

101. Martinez Cobo study. *Conclusions*, op. cit. at Paras. 89 and 90.

102. Martinez Cobo study. *Chapter XIII : Education*. op. cit. at p. 107.

103. Mario Ibarra. "Traditional Practices in Respect of the Sustainable and Environmentally Sound Self-development of Indigenous Peoples". *Background Paper*. UN Doc. E/CN. 4/Sul/1993/29, at p. 10.

104. Fatma Zohra Ksentini, *UN Study on the Human Rights and Environment*, Preliminary report. UN. Doc. E/CN. 4/Sub. 2/1991/ 8 at Para. 26.

105. Walter Fernandes, "Practice of Indigenous Peoples in the Conservation of Natural Resources and Rehabilitation of the Environment". *Background Paper*, UN. Doc. E/CN. 4/Sub. 2/1993/ 29 at p. 35.

106. Fatma Zohra Ksentinit. *UN Study*. op. cit.

107. Rodolfo Stavenhagen. *Ethnic Question*. op. cit. at p. 106.

108. Mario Ibarra. *Traditional Practice*. op. cit. at p. 8.

109. *The Realisation of the Right to Development, Global Consultation on the Right to Development as a Human Right : Report by the Secretary General*. United Nations Publication, New York, 1991 (HR/PUB/ 91/2) at Para. 105.

110. Fatma Zohra Ksentini, *UN Study*, op. cit. at Para 27. The Study on Human Rights and Environment prepared for the *United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1991*.

111. Peter Adamson, "Development : A Design for the 80s". *UNICEF News*, 3 (1980) pp. 27-29.

112. Pelter Gally. "What Really Matters : Human Development", *World Development Magazine*, January 1990 at p. 6.

113. On the concept of sustainable development, *see* generally, Meinhard Schnoder, "Sustainable Development", *LS*, 51 (1995), pp. 101-113; Andre Lalonde, "Indigenous Knowledge, Innovation and Sustainable Development : an information since perspective", *SJDA*, 14(1/2) 1995, p. 206-221. R.A. Malviya, "Sustainable Development and Environment : Emerging Trends and Issues", *IJIL* 3 (1996) pp. 57-74.

114. Sylvie Fauchex and Jean Francois. "Les Menaces globales sur I' senvironment", Editions La Decouverte, Paries, 1990 at p. 102, Quoted in Morio Ibarra, *Traditional Practice*, op. cit. at p. 17.

115. Fatma Zohar Ksentini. *UN Study*, op. cit. at Para. 25.

116. Ibid.

117. UN Chronicle. "The Rio Declaration on Environment and Development". September 1992, pp. 59-67. For the text of the Rio Declaration on Environment (Rio De Jenerio, June/1992) *see*, UN. Doc. E/CN.4/Sub.2/Ac. 4/1996/5/Add. at p. 4.

118. The popular provisions regarding the right to development are : *UN General Assembly resolution 1161 (XII)* of 26 November 1957; the Third preambular paragraph of the *International covenant on Economic*, Social and Cultural Rights (1966); *the International Conference on Human Rights* held in Tehran, Iran, in 1968; *Human Rights Commission's resolution* 1969; *UN General Assembly Declaration on the Right to Development on 4th December 1986.*

119. The document known as *Declaration of San Jose on Ethnocide and Ethno-development*, 1981.

120. Ibid., Article 2.

121. Ibid., Article 3.

122. Ibid.

123. For the text of the Draft, *see*, Erica-Irena A. Daes, *Report of the Working Group on Indigenous Populations on its eleventh session in 1993*, UN. Doc. E/CN. 4/Sub. 2/1993/29 at pp. 50-60.

124. According to the Encyclopaedia of Social Sciences, self-determination is "the right of peoples to determine their own soverignty" Definitions vary somewhat. Self-determination as a general term is an expression of the aspiration to rule one-self and not to be ruled by others. The right to self-determination means that all the peoples have the right to determine, without

any external interference, their political status and freely pursue their economic, social and cultural development.

125. Articles 1 and 55 of the *UN Charter* recognise the "equal rights and self-determination of peoples".

126. Common Article 1 of the *International Covenant on Economic, Social and Cultural Rights*, 1966 and *International Covenant on Civil and Political Rights*, 1966, recognise that : "All peoples have the right of self-determination". For the texts, *see*, *Human Rights : A Compilation of International Instruments*. UN Publication, New York (1988), pp. 7-38.

127. *The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*. General Assembly resolution 2625 (XXV), UN Doc. A/8028 (1970). For the text see *ILM* Vol. 6, 1970, pp. 1292-1295.

128. *The Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV)* of 14 December 1960; *General Assembly resolution 1803 (XVII)* of 14 December 1962, "Permanent sovereignty over natural resources". For the texts, *see*, *supra note* 125, pp. 47-51.

129. Lars Emil Johansen. "Opening Speech by the Premier of Greenland in UN Meeting of Experts", UN Doc. E/CN. 4/1992/Add. 1, p. 5.

130. Andree Lawrey, "Contemporary Efforts". op. cit. at p. 73.

131. Martinez Cobo study. *Chapter XV : Culture and Cultural, Social and Legal Institution*, UN Doc. E/CN. 4/Sub. 2/1983/2/Add. 3, p. 3.

132. Erica-Irene Daes. Working Group's Report on Its 12th Session. UN Doc. E/CN.4/Sub.2/1994/30, p. 21.

133. Erica-Irene Daes. *Standard Setting Activities : Evolution of Standards Concerning the Rights of Indigenous Peoples. see*, UN Doc. E/CN. 4/Sub. 2/Ac. 4/1994/4/Add. 1 at Para. 7.

134. Kirgis Frederic L., "The degrees of self-determination in the United Nation era", *AJIL* 88 (1994) at p. 304. *see* also, Michla Pomerance, "The United States and Self-determination : Perspectives on the Wilsonian Conception", *AJIL*, 70 (1976) at p. 16.

135. *GA/Res. 1514 (XV). 15 UN. Doc. A/4684 (1960).*

136. *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, Art. 1, 993 UNTS 3; *International Covenant on Civil and Political Rights*, Dec. 16, 1966, Art. 1, 999 UNTS 171.

137. *ICJ Report*, June 1975 (Namibia, Advisory Opinion).

138. *ICJ Report*, October 1975 (Western Shahara, Advisory Opinion).

139. *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, Annex. to GA Res. 2625, *see*, also 9 *ILM* 1292 (1970).

140. Vienna Declaration and Programme of Act, 1993, *see*, *ILM* 1661 (1993) at Para. 2.

141. The territorial integrity of UN member States, is protected in Article 2(4) of the *UN Charter*. This Article is invariably adhered to by States in support of the maintenance of their territorial integrity. The Article 2(4) runes : "All members shall refrain in their international relations from the threat or use of force against the *territorial integrity* or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". Paragraph 7 of Principle V of the *UN Declaration on Friendly Relations* 1970 deals with and provides protection for, the *territorial integrity* in the event of any self-determination claim.

142. M. Ratiqual Islam. "Indigenous Self-determination at the Crossroads : Right of a State Versus Right of its People", *IJIL*, 36 (1996) at p. 47.

143. Article 1(2) of the *UN Charter* affirms : "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

144. Heintze. *The International Law.* op. cit. at p. 45.

145. Principle 1 of the *Declaration of Principles of Indigenous Rights*. Adopted by the Fourth General Assembly of the World Council of Indigenous Peoples, Panama, Sept. 1984, *see* Erica-Irena Daes. *Working Group's Report on its Fourth Session 1985*. UN Doc. E/CN. 4/Sub. 2/1985/22. Annex. 2. This principle of indigenous self-determination is formulated in accordance with the terms of common Article 1(1) of both the Human Rights Pacts of 1966.

146. Principle 2 of the *Declaration of Principles on the Rights of Indigenous Peoples*. Adopted by representatives of indigenous organisations meetings in Geneva, July 1985, in preparation for the fourth session of the United Nations Working Group an Indigenous Populations; as reaffirmed and amended by representatives of indigenous peoples and organisations meeting in Geneva, July

1987, in Preparation for the working groups fifth session. *see*, Erica-Irena Daes. *Working Group's Report on its Fifth Session, 1987*. UN Doc. E/CN. 4/Sul. 2/1987/22, Annex. 5 (1987).

147. Principle 3, Ibid.

148. Principle 18, Ibid..

149. For a discussion on the distinction between *"external"* and *"internal"* aspects of self-determination, *see*, Michla Pomerance, *Self-determination in Law and Practice : The New Doctrine in the UN*, Hague, 1982, pp. 37-42; S.R. Saini, "Is the Right of Self-determination Relevant to Jammu & Kashmir?" *IJIL* 38 (1998) at p. 172; For the Self-determination and contemporary international practice concerning Indigenous Peoples, *see*, S. James Anaya. *Indigenous Peoples in International Law.* Oxford University Press, New York, 1996 at pp. 85-88.

150. Article 48(2) of the draft Covenant on Civil and Political Rights reads as follows : The states parties to this Covenant who are responsible for the administration of any non-self governing territory, undertake, through elections, plebiscites or other democratic means... to determine the political status of such territories." Such decisions shall be based on evidence of the desire of the inhabitants of such territory as expressed through their political institutions or parties. *Source : ECSOC Official Records* 18 Sess; Supple. No. 7 (E/2573) Annex. 1 p. 71.

151. Article 1(3) of the *ILO Convention No. 169* provides : "The use of the term "peoples" in this Convention shall not be construed as having any implication as we regards the rights which may attach to the term under international law".

152. *Sandra Lovelace v. Canada*, UN Human Rights Committee, Communication No. 24/1977, UN GAOR, 36th Sess. Supp. No. 40, at 166, UN Doc. A/36/40, Annex. 18 (1977).

153. Lars Adam Rehof. "Effective means of planning for and implementing autonomy, including negotiated Constitutional arrangements and involving both territorial and personal autonomy". *Background Paper*. UN Doc. E/CN. 4/1992/42/Add. 1 at p. 89.

154. The discussion in the *Human Rights Commission* in 1952-53, UN. Doc. A/2929. Chapter VI, and the deliberations in the third Committee in 1961, Doc. A/5000, Paras. 120-123 and Doc. A/C-3/SR/1103.

155. Lars Adam Rehof., Effective means. op. cit.

156. Application No. 167/1984.

157. Application No. 197/1985.

158. The case is popularly known as *Miskito case*, case No. 7964 (Nicaragua) *see*, IACHR Miskito Report, OAS Doc. OEA/Ser. L/V/11, 66, pp. 78-79.

159. Ibid.

160. Ibid.

161. *Declaration on the Granting of Independence to Colonial Countries and Peoples, GA* Res. 1514 (XV), 15 UN. Doc. A/4684 (1960).

162. *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of United Nations*, GA Res. 2625 (XXV), UN. Doc. A/8028 (1970).

163. Martinez Cobo study. *Chapter XVIII: Political Rights*, UN. Doc. E/CN. 4/Sub. 2/1983/21/Add. 6 at p. 13.

164. Hurst Hannum and Richard B. Lillich, "The Concept of Autonomy in International Law", *AJIL* 74 (1980) at p. 860.

165. Ponciano Bennagen, "Fiscal and Administrative Relation between Indigenous Governments and States", *Background Paper*, UN. Doc. E/CN. 4/1992/42/Add. 1 at P. 71.

166. In the United States of America, a reservation may be created by congressional action, or by treaties. According to which territorial autonomy is guaranteed in favour of Indians.

167. The comaraca as a concept aims to guarantee in right to *internal* self-determination of the Indians of Panama.

168. By Denish Act of 29 Nov. 1987, Home Rule was established in Greenland with the unity of the Denish Realm. Home Rule establishes indigenous self-government within the State's legal framework. *see*, Emil Abelson, "Home Rule in Greenland", *Background Paper*, UN. Doc. E/CN. 4/1992/42/Add. 1, p. 103.

169. The Constitution of Brazil, 1988, contains provisions granting indigenous self-government in Brazil (Chapter VIII of the Constitution).

170. *See*, Prabhat Dutta, "The Hill Council Experience in West Bengal : A case study", *IJPS*, 1 (1994) pp. 21-26.

171. *See, The Times of India*, New Delhi, Feb. 20, 1997, pp. 14-15; Directorate of Public Information, *Bodoland Movement : An Analysis of Events*. Dispur (1989).

172. *International NGO Conference on Indigenous Peoples and Land*, held in Geneva, Switzerland in 1981.

173. UN Seminar on resource procedures and other forms of protection available to victims of racial discrimination and activities to be undertaken at the national and regional levels, held at Managna; Nicaragua, 14-21 December, 1981, UN Doc. ST/HR/SER. A/11.

174. Ibid., at Para. 54.

175. Ibid., at Para. 55.

176. Ibid., at Para. 13(m).

177. Martinez Cobo study. *Part Third : Conclusions, Proposals and Recommendations*. UN Doc. E/CN. 4/Sub. 2/1983/21/Add. 8.

178. Ibid. at Para. 581.

179. Ibid. at Para. 580.

180. The Conclusions and Recommendations may be consulted in the report of the meeting of experts to review the experience of countries in the operation of schemes of *internal* self-government for indigenous peoples. For the background material, see UN. Doc. E/CN. 4/1992/42/Add. 1. For the text of the Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-government (Nuuk, Greenland, 24-28 Sept. 1991) *see*, UN. Doc. E/CN. 4/Sub. 2/AC. 4/1996/5.

181. Ibid., at Para. 1.

182. Ibid., at Para. 2.

183. Ibid., at Para. 2-3.

184. Ibid., at Paras. 4 and 9.

CHAPTER - 4

Evolution and Recognition of Political Processes in Realization of the Rights of Indigenous Peoples (Regarded as Tribals) in India

In the preceding chapters an attempt had been made to discuss the meaning of the words "Indigenous" and "Peoples", evolution of certain rights of Indigenous Peoples which have received recognition within the human rights framework at international level. These rights are related to either Land and Resources or Culture, Language and Education or Development. But the right of *internal* self-determination in the form of autonomy or self-government is the possible form/process for the realisation of the rights of Indigenous Peoples. It has also emerged that at the international level the term "Indigenous Peoples" has been well recognised and this term can be attributed to the "Scheduled Tribes" in India. At the national level, two types of political processes have been recognised under the *Constitution* for the realisation of the rights of tribals in India, one is under the *Fifth Schedule* and another is under the *Sixth Schedule*. The *Sixth Schedule* is applicable to four States of North-East India, viz. Assam, Meghalaya, Tripura and Mizoram, and the *Fifth Schedule* is applicable to the rest of India. Therefore, before a detailed study is undertaken to examine the process of realisation of the rights of Indigenous Peoples (regarded as Tribals) in Tripura, it is necessary to examine in detail both political processes recognised under the Constitution of India. This chapter is primarily devoted to this Constitutional aspect.

I. EVOLUTION OF POLITICAL PROCESSES IN REALIZATION OF THE RIGHTS OF INDIGENOUS PEOPLES (REGARDED AS TRIBALS) IN INDIA

In this part, we propose to throw light on the evolution of political processes for administration of tribals and realisation of their rights during Pre-British, British and Post-Independent India. The present administrative system in India was, by and large, evolved during the British days. Although, there have been changes, modifications and expansions in the system the basic structure has more or less remained intact. Therefore, no study in Post-Independence era, can be completed without reference to the Pre-British and British Rule.

(A) Governance and Administration of Tribals in Pre-British India

Before we examine the tribal situation in the British period, it may be mentioned that the tribal people were never fully conquered or subjugated by the Muslim rulers who preferred to make settlements with the local non-tribal princes or if expedient, with the tribal chieftains instead of dealing with the tribal people directly[1]. In many areas, they had their own princelings who ruled independently or as vassals of Delhi based kings or local princes. Even where there was no tribal chieftain, the non-tribal rulers found it expedient, to deal with their tribal subjects through their chiefs and confined themselves to the collection of their share of levy. They did not interfere with customary laws, tribal life-styles and economic fabries. The result was that tribal life was not subjected to or influenced by political vicissitudes and changes in Delhi. Till the British made their debut, the tribals were literally masters of all they surveyed.[2]

(B) Governance and Administration of Tribals in British India

For obvious reasons, the administration of tribal areas and its inhabitants was not on the priority list of the East India Company in the early period of British rule in India. Most of the British officials were completely ignorant of tribal customs or of the existence of many tribes in late eighteenth or early nineteenth century. Their contact with the tribal people became rather difficult because the tribals lived in inaccessible areas in remote hills,

marshy and material forests and in hospitable tracts. Thus, while the British succeeded in isolating the tribal people from rest of the country, they did not bother to save them from the clutches of money lenders, landholders and contractors and from the influence of the missionaries who followed a policy of proselytization along with welfare activities among the tribal people[3] . The effect of this policy was summarised by *J.H. Hutton* as follows :

> Far from being of immediate benefit to the primitive tribes, the establishment of British Rule in India did some of them much more harm than good .... . It may be said that the early days of British Administration did very great detriment to the economic position of tribes through ignorance and neglect of their rights and customs... many changes have been caused incidentally by the penetration of the tribal country, the opening up of communications, the protection of forests and establishment of schools, to say nothing of the opening given in this way to Christian Missions. Many of the results of these changes, have caused acute discomfort to the tribes.[4]

It can be said that the British followed a policy of expediency in which tribal interests were subordinated to larger British interests. The tribal people were segregated from the rest of the population excepting the undesirable segments. The vested interests were shrewd "enough to benefit from every act of commission or omission of their foreign rulers."[5] No wonder, this attitude led to considerable discontent and revolts among the tribal people.[6] The earlier revolts and all round discontent among the tribes, forced the British to revise their policy of isolation and adopt a policy of limited isolation. The British decided to intervene only to maintain law and order and to minimise exploitation by taking legal, protective and executive measures. With these ends in view the British Parliament enacted a number of Acts, Regulations, etc.[7] until the commencement of the *Constitution of India* and the special provisions were made therein for the administration and development of trial areas[8] of all parts in India. These developments can be examined under the following heads :

(i) Developments up to 1873.

(ii) Constitution of Scheduled Districts.

(iii) Declaration of Backward Tracts.

(iv) Creation of Excluded and Partially Excluded Areas.

(i) Developments up to 1873

The first important legislation, which recognised that administration in advanced areas of Bengal and Bihar was not suited to tribal areas, was the *Regulation XIII* of 1833. The Regulation had declared Chhota Nagpur a "non-regulated" area. However, the reform and administrative measures contemplated under the Regulation were not implemented. Special laws were enacted for other tribal areas also. The main feature of these laws was a simple and elastic form of judicial and administrative procedure. The *Government of India Act, 1835* allowed laws to be made directly for tribal areas under the Government of East India Company. The administration of these areas was taken over by the British Sovereign in 1858. The *Indian Councils Act, 1861*, validated the Laws made under the *Government of India Act, 1835* for peace and good government.[9] The *Garo Hills Act, 1869*, provided for exclusion of Garo Hills areas from the general administrative set up and vesting of the administration of these areas in such officers as the lieutenant Governor might, from time to time, appoint. The Act further provided for extension of provisions of the Act to Jaintia Hills, Naga Hills and such portion of Khasi Hills as for the time being formed part of British India. In fact the *Garo Hills Act, 1869*, prescribed a separate system of administration of justice in these areas.[10] For sometimes, the power to make laws by the executive authorities was withdrawn. However, it was again conferred by the *Government of India Act, 1870*, which was extended to the Assam Valley, Hill Districts and Cachar in 1873.[11]

(ii) Constitution of scheduled districts

The enactment of the *Scheduled Districts Act, 1874*, may be called the first significant measure taken to deal with all tribal areas in the country which declared tribal areas as *Scheduled Districts*. By this Act an uniform law was promulgated by the Government of India to embrace all tribal concentrations throughout the country. The word "District" in this enactment corresponded to a specified area and not to the present revenue

division. The *Scheduled Districts* were identified from "those remote and backward tracts of provinces of British India which had never been brought within or which had from time to time been removed from the operation of the general Acts and Regulations and jurisdiction of ordinary courts or in which that operation was not complete, and officers were supposed to be guided by the spirit of indispensable laws, or were actually guided by such laws as had somehow or other been considered to be in force".[12] The Act provided for appointment of officers called *Agents* to decide civil and criminal cases, to undertake settlement and collection of public revenues and conduct administration within the *Scheduled Districts*. The Areas under the control of *Agents* were described as *Agency Areas*. The Act also allowed modification of laws in force in other parts of India to suit a particular *Scheduled District*. This enabled the executive to legislate, though to a limited extent, in tribal areas.[13]

(iii) Declaration of backward tracts

The Scheduled District Act, 1874, was repealed when the Sections 52A and 52B of *the Government of India Act, 1919,* came into force. The Act designated the tribal areas as *Backward Tracts*. Section 52A(2) of the Act provided that the Governor-General in Council could declare any territory in British India to be a *Backward Tracts*. On such a declaration being made, the Governor-General in Council could direct that any Act of the Indian Legislature would not apply to the territory in question or would apply subject to such exceptions or modifications as was thought fit. The Sub-section (2) of Section 52A was as follows :

> The Governor-General in Council may declare any territory in British India to be a "backward tract" and may, by notification, with such sanction as aforesaid, direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or

> modifications as the Governor-General thinks fit, or may authorise the Governor in council to give similar directions as respects any Act of the local legislature.

The *Backward Tracts* were determined from time to time[14] and the laws were applied with such restrictions and modifications as was deemed fit. The Section 52B of the *Government of India Act, 1919* empowered the Provincial Legislature to vote necessary expenditure. The Act also allowed consideration of local convention in administering the *Backward Tracts.* The Administrators at the district and *taluka* levels could take final decisions in matters related to law and order and land rights and had greater freedom in inaccessible tribal areas. This allowed considerable freedom to local subordinate officials of police, revenue and forest departments to perform their functions according to their protective or exploitive tendencies. Thus, the Act did not change the policy of isolation towards tribals but it tried to define and determine limits and extent of isolation.

(iv) Creation of excluded and partially excluded areas

The *Indian Statutory Commission* as appointed by the British Government in 1927, *inter alia,* examined the policy adopted by the Government towards the *Backward Tracts.* The Commission visited the areas inhabited by the tribals, and came to conclusion that their backwardness precluded them from any kind of representative Government. They did not ask for self-determination but for security of land tenure, freedom in the pursuit of their traditional methods of livelihood and reasonable exercise of their ancestral customs. In 1930, the *Report of the Indian Statutory Commission* was submitted.[15] The *Report* had proposed a number of modifications regarding the *Backward Tracts.* These proposals were reflected into the *Government of India Act, 1935.*[16] The Act divided *Backward Tracts* into *Excluded Areas* and *Partially Excluded Areas.* Sections 91 and 92 dealt with these Areas. Section 91 defined the expressions *Excluded* and *Partially Excluded Areas,* and prescribed the principle in selection of these areas. Section 91 (1) defined *Excluded Areas* and *Partially Excluded Areas* as under :

> In this Act the expressions "excluded area" and "Partially excluded area" mean respectively such areas as His Majesty may by Order in Council declare

to be excluded areas or partially excluded areas. The Secretary of State shall lay the draft of the order which it is proposed to recommend to His Majesty to make under this sub-section before Parliament within six months from the passing of this Act.

Under Section 91 (2), the power was vested to His Majesty by Order in Council to declare an area to be *Excluded Area* or *Partially Excluded Area.*[17] The principle adopted in the selection of these areas was that where there was an enclave or a definite tract of country inhabited by a compact tribal population, it was classified as an *Excluded Area.* Where, however, the tribal population was mixed up with the rest of the Communities and the tribals were substantial enough in numbers, the area was classified as *Partially Excluded.* The point of distinction between an *Excluded Area* and a *Partially Excluded Area* was that while both classes of areas were excluded from the competence of the Provincial and Federal Legislatures, the administration of *Excluded Areas* was vested in the Governor acting in his discretion while administration of the *Partially Excluded Areas* was vested in the Council of Ministers subject, however, to the Governor exercising his individual judgement.

With respect to the administration of *Excluded Areas* and *Partially Excluded Areas,* Section 92 of the *Government of India Act, 1935,* provided thus :

1. The executive authority of a Province extends to excluded and partially excluded areas therein, but, no Act of the Federal Legislature or of the provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

2. The Governor may make regulations for the peace and good government of any area in a province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or

any existing Indian Law, which is for the time being applicable to the area in question.

Regulations shall be submitted forth with to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

3. The Governor shall, as respects any area in a province which is for the time being an excluded area, exercise his functions in his discretion.

The provisions of the *Government of India Act, 1935* were based on the principle that legislation which was passed by the Federal or Provincial Legislature was often likely to be unsuitable for application to the Hill Districts. The mechanism provided for "filtering" the legislation was therefore to empower the Governor of the province to apply or not apply such legislation. The main features of the provisions were that :

(i) Certain areas had been scheduled as excluded or partially excluded.

(ii) It was possible to transfer the areas form the category of excluded to the category of partially excluded by the Order-in-Council and, similarly, from the category of partially excluded to the category of non-excluded.

(iii) Legislation would not apply automatically to any such Scheduled area even if it was a partially excluded area, but would have to be notified by the Governor who, if he applied them at all, could make alterations.

(iv) The revenues for excluded areas were charged to the revenues of the province and special regulations, which were not applicable to the rest of the Province, could be made by the Governor in his discretion of excluded and partially excluded areas.

From the above brief description, it emerges that during the British period, the problem of administration of tribal areas

were recognised and a number of protective mechanism had been introduced for the administration of these areas . For this end, the *Scheduled Districts Act, 1874* declared that the tribal areas as *Scheduled Districts*, the *Government of India Act, 1919* designed the tribal areas as *Backward Tracts* and the *Government of India Act, 1935* again declared these areas as *Excluded and Partially Excluded* areas, but what was common to all measures was the provision of filtering the applicability of the Federal or Provincial Legislations. Therefore, the Cabinet Mission's statement of 16 May, 1946, mentioned the tribal areas as requiring the special attention of the *Constituent Assembly*. Paragraph 20 of the Cabinet Mission's Statement provided thus :

> The Advisory Committee on the rights of Citizens, Minorities and Tribal and Excluded Areas will contain due representation of the interests affected and their functions will be to report to the Union Constituent Assembly upon the list of the fundamental rights, clauses for protecting Minorities, and a Scheme for the administration of Tribal and Excluded Areas, and to advise whether these rights should be incorporated in the provincial, the group or the Union Constitution.[18]

(C) Development of Political Processes for Tribals During Constitution Making

Although the *Constituent Assembly* had appointed a number of important Committees and Sub-Committees, besides the *Drafting Committee* for the purpose of framing the Constitution, in the light of the views expressed by the Cabinet Mission, earlier quoted, the *Constituent Assembly* had special attention to the matter concerning the governance and administration of tribal areas. In its endeavour the *Constituent Assembly* set up an *Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc.* The motion adopted by the *Constituent Assembly* setting up the *Advisory Committee* laid down that this Committee should appoint Sub-committees to prepare schemes for the administration of the *Tribal and Excluded Areas*. Consequently, the *Advisory Committee* with a view to examine the matter in detail, appointed two Sub-Committees,[19] namely :

(i) The North-East Frontier (Assam) Tribal and excluded Areas Sub-Committee (hereinafter referred to as *Sub-Committee on Assam*).[20]

(ii) The Excluded and Partially Excluded Areas (other than Assam) Sub-Committee (hereinafter referred to as *Sub-Committee on other than Assam).*[21]

These two Sub-Committees undertook extensive tours of concerned provinces, examined witnesses and representatives of the people concerned, collected views of the different political organisations and provincial governments. The *Sub-Committee on Assam* submitted its report on July 28, 1947 to the Chairman of the Advisory Committee. The *Sub-Committee on other than Assam* submitted its report in two installments. The interim report submitted on 18 August, 1947, related to the areas in the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa. The final report relating to the areas in Bihar, the United Provinces and Punjab was submitted in September, 1947. In the meanwhile there was held, at the suggestion of the Chairman of the *Advisory Committee*, a joint meeting of the two Sub-Committees. The recommendations of this joint meeting were submitted on August 25, 1947. These two Sub-Committees ultimately recommended separate schemes of administration for their respective tribal areas.[22]

(i) Report of the Sub-Committee on Assam

In its report, the *Sub-Committee on Assam* had recommended a separate framework of the scheme of administration for the tribes of Assam and also underlined various factors which necessitated a separate treatment for the tribal people of Assam. These factors were dealt with the political experience, fear of exploitation, control of immigration, future policy, etc.

(a) Factors justifying separate treatment

(1) Political experience

About the political experience of the tribes of Assam, the *Sub-Committee on Assam* had the view that the tribals of Assam were all highly democratic in the sense that their village councils were created by general assent or election although there were no

statutory local self-governing bodies in any hill districts except Shillong. The tribals could be able to manage a large measure of local autonomy. Dealing with the political experience of the tribal people the *Sub-Committee on Assam* stated that :

> Except for the Municipality of Shillong, there are no statutory local self-governing bodies in any of the Hill Districts. The partially excluded areas have elected representatives in the Provincial Legislature but in Garo Hills the franchise is limited to the Nokmas and in the Mikir Hills to the Headmen. Generally, however, the tribes are all highly democratic in the sense that their village councils are created by the general assent or election. Chiefship among certain tribes like the Lushai is hereditary (although certain chiefs have been appointed by the superintendent) but among other tribes appointment of headmen is by common consent or by election or, in some cases, selection from particular families. Disputes are usually settled by the chief or headman or Council of elders. In the Naga Hills what is aimed at is general agreement in settling disputes. Allotment of land for *jhum* is generally the function of the chiefs or headmen (except in the Khasi and Jaintia Hills) and there are doubtless many other matters pertaining to the life of the village which are dealt with by the chiefs or elders, but while this may form a suitable background for local self-government the tribes altogether lack experience of modern self-governing institutions. The "District Conference" of the Lushai Hills, the tribal Council of the North Chachar Hills and the Naga National Council are very recent essays in organizing representative bodies for the district as a whole and have no statutory sanction. While there is no doubt that the Naga, Lushai and Garo will be able to manage a large measure of local autonomy, the North Cachar tribes and the Mikir may yet want a period of supervision and guidance.[23]

(2) Hill people's land

The *Sub-Committee on Assam* had pointed out the fear of exploitation of hills people by the people of the plains on account of their superior organisation and experience of business. The hill people feared that if suitable provisions were not made to prevent the people of the plains from acquiring land in the hill areas, large numbers of them could settle down and not only occupy land belonging to the hill people but could also exploit them in the non-agricultural professions. The *Sub-committee on Assam* stated that :

> The anxiety of the hill people about their land and their fear of exploitation are undoubtedly matters for making special provisions; it has been the experience in other parts of India and in other countries, that unless protection is given, land is taken up by people from the more advanced and crowded areas. The question has already acquired serious proportions in the plains portions of Assam and the pressure of population from outside has brought it up as a serious problem which in the next few years may be expected to become very much more acute. There seems to be no doubt whatever therefore that the hill people should have the largest possible measure of protection for their land and provisions for the control of immigration into their areas for agricultural or nonagricultural purposes. It seems also clear that the hill people will not have sufficient confidence if the control on such matters is kept in the hands of the Provincial Government which may only be too amenable to the pressure of its supporters. Even the Head of the State under the new Constitution will probably be an elected head, and even though he may be elected also by the votes of the hill people, they may still have the fear that he will give way to the pressure of the plains people on whose votes he may be largely dependent. The atmosphere of fear and suspicion which now prevails, even if it is argued that it is unjustified, is nevertheless one which must be recognized and in order to allay these suspicions and

> fears, it would appear necessary to provide as far as possible such constitutional provisions and safeguards as would give no room for them. Moreover, in the areas where no right of private property or proprietary right of the chiefs is recognised the land is regarded as the property of the clan, including the forests. Boundaries between the area of one hill or tribe are recognised and violation may result in fighting. Large areas of land are required for *Jhum* and this explains in part the fear of the tribesman that is availability will be reduced if incursions by outsiders is permitted. In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such controls should be vested in the hands of the hill people themselves. Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provincial Government for public purposes or prevent the acquisition of private land, also required for public purposes, on payment of compensation.[24]

(3) Control of immigration

About the problem of immigration the *Sub-Committee on Assam* had stated that the hill people were extremely nervous of outsiders, particularly non-tribals, and felt that they were greatly in need of protection against their encroachment. It was on account of this fear that they attach considerable value to regulations like the *Chin Hills Regulations* under which in outsider could be required to possess a pass to enter the hill territory beyond the *Inner Line* and an undesirable person could be expelled. The hill people felt that with the disappearance of exclusion they should have powers

similar to those conferred by the *Chin Hills Regulations*. The Provincial Government, in their view, was not the proper custodian of such powers since they would be susceptible to the influence of plains people. With respect to the control of immigration the *Sub-Committee on Assam* stated that :

> Experience in areas inhabited by other tribes shows that even where provincial laws conferred protection on the land they have till been subjected to expropriation at the hands of money landers and others. We consider therefore that the fears of the hill people regarding unrestrained liberty to outsiders to carry on money lending or other non-agricultural professions is not without justification and we recognize also the depth of their feeling. We recommend accordingly that if the local councils so decide by a majority of three-fourths of their members, they introduce a system of licensing for money lenders and traders. They should not of course refuse licences to existing money lenders and dealers and any regulations framed by them should be restricted to regulating interest, prices or profit and the maintenance of accounts and inspection.[25]

(4) Future policy

In regard to the future policy of the hills of Assam, the *sub-committee on Assam* had stated the fact that the hill people of Assam had not yet been assimilated with the people of the plains of Assam had to be taken into account though a great proportion of hill people had classed as plains tribals had gone a long way towards such assimilation. The distinct features of their way of life had to be taken into account and assimilation could not take place by the sudden breaking up of tribal institutions. About the future policy of Assam hills in *Sub-Committee* mentioned :

> ..... it is the advice of anthropologists.... that assimilation can not take place by sudden breaking up of tribal institutions and what is required is evolution or growth on the old foundations. This means that the evolution should come as far as possible from the tribe itself but it is equally clear

> that contact with outside influences is necessary though not in a compelling way. The distinct features of their way of life have at any rate to be taken into account. Some of the tribal systems such as the system of the tribal council for the decision of disputes afford by far the simplest and the best way of dispensation of justice for the rural areas without the costly system of courts and codified laws. Until there is a change in the way of life brought about by the hill people themselves, it would not be desirable to permit any different system to be imposed from outside. The future of these hills now does not seem to lie in absorption in that the hill people will become indistinguishable from non-hill people but in political and social amalgamation.[26]

Besides the abovementioned factors, there were another three factors which necessitated the *Sub-Committee on Assam* to recommend a separate framework of scheme of administration for the tribal people of Assam as under :

(a) The distinct social customs and tribal organisations of the different peoples as well as their religious beliefs.

(b) The fear of exploitation by the people of the plains on account of their superior organisation and experience of business.

(c) In making suitable financial provisions it was feared that unless suitable provisions were made or powers were conferred upon the local councils themselves the Provincial Government might not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas.[27]

(b) Recommendations of the Sub-Committee on Assam

The *Sub-Committee on Assam* had recommended, as mentioned earlier, a separate scheme of administration for the hill districts of Assam. The summary of Recommendations of the *Sub-Committee on Assam* as follows :

(a) Autonomous District Councils could be set up in hill districts with powers of legislation and administration over land,

village, forest, agriculture and village and town management in general, in addition to the administration of tribal or local laws and primary education and of management of local institutions which normally come under the scope of local self-governing institutions in the plains.

(b) All social law and custom was left to be controlled or regulated by the tribes.

(c) Certain taxes and financial powers could be allocated to the councils. They should have all powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest.

(d) The management of mineral resources could be centralised in the hands of the provincial Government but the right of the district councils to a fair share of the revenue is recognised.[28]

(ii) Report of the Sub-Committee on other than Assam

In its interim report,[29] the *Sub-Committee on other than Assam* made recommendations of vital importance regarding the provisions to be made for the protection and advancement of the tribal people in India other than Assam. The terms of references of the *Sub-Committee* required it to draw up a separate scheme for the administration of the Excluded and Partially Excluded Areas in India other than Assam. The *Sub-Committee* also underlined various factors which necessitated to draw up a separate treatment. No any major change was made in the final report of the *Sub-Committee.*

(a) Factors justifying separate treatment

As the *Sub-Committee on other than Assam* proceeded with its labours, it found that the excluded and partially excluded areas were well defined areas populated either predominantly or to a considerable extent by aboriginals, but the problem of the tribal population was much more pervasive than the problem of delimiting certain areas and prescribing a scheme for their

administration. The Sub-Committee recognised that from the beginning the objectives of the Government's policy in regard to the tribes and tribal areas were primarily directed to the preservation of their social customs from sudden erosion and to safeguarding their traditional vocations without the danger of their being pauperized by exploitation by the more sophisticated elements of the population.[30] At the same time is was recognised that this stage of isolation could not last indefinitely, a second and major objective was, therefore, laid down, that their educational level and standard of living should be raised in order that they might in course of time be assimilated with the rest of the population. From this point of view the Sub-Committee was of the opinion that the policy of exclusion and partial exclusion had not yielded much tangible result in progress of the aboriginal areas towards the removal of their backward condition or in their economic and educational betterment. The Sub-Committee did not therefore find it advisable to abolish the administrative distinction between the backward areas and the rest of the country, and it recommended that while certain areas like Sambalpur in Bihar and Angola in Orissa need no longer be treated differently from the regularly administered areas, there were other areas which needed a simplified type of administration to protect the aboriginal people from exposure to the complicated machinery of the ordinary law courts and save them from the clutches of the moneylender who took advantage of their simplicity and illiteracy, deprived them of their agricultural land and reduced them to a state of virtual serfdom. For these reasons the *Sub-Committee* had recommended a separate schemes of administration for tribal population in India other than Assam.[31]

(b) Recommendations of the Sub-Committee on other than Assam

The summary of the recommendations of the *Sub-Committee on other than Assam* as under :

(1) That the areas predominantly inhabited by tribal people could be known as *Scheduled Areas* and special administrative arrangements made in regard to them.

(2) That the Constitution could provide for the setting up in each Province of a body which would keep the Provincial Government constantly in touch with the needs of the

aboriginal tracts in particular and with the welfare of the tribes in general. This body was to be known as *Tribes Advisory Council*, which could have a strong representation of the tribal element. The *Tribes Advisory Council* could primarily advise the government in regard to the application of laws to the *Scheduled Areas.*[32]

(iii) Joint report of the two Sub-Committees

As noted earlier, the *Sub-Committee on Assam* and the *Sub-Committee on other than Assam* had recommended separate schemes of administration for their respective tribal areas. However, in some points both *Sub-Committees* had the same view. The *Joint Report* of the two *Sub-Committees* had explained the common features of both the tribal areas of Assam and the tribal areas of rest of India and the special features of the tribal areas of Assam. The *Joint Report*, therefore, had recommended some common policy, except the scheme of administration, for the protection of tribals either in Assam or other parts of India.

(a) Factors justifying separate and common treatment

(1) Social and economic life of tribals in India

Dealing with the social and economic life of the tribal people, either in Assam or other parts of India, the *Joint Report* of the two *Sub-Committees* had stated that the tribal inhabited areas were highly malarial and infested by other diseases and lacking of civilization facilities. The tribals were very simple people who could be exploited by money-lenders. The sudden disruption of tribal custom and way of life could be harmful for tribals. Therefore the statutory safeguards were required for the protection of the land which was the mainstay of the tribal's social and economic life. The *Joint Report* of the two *Sub-Committees* had stated thus :

> The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plainsfolk resulting in the

> passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribals customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the 'ribals' simplicity and weaknesses it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value. In making provisions however allowance could be made for the fact that in the non-excluded areas the tribals have assimilated themselves in considerable degree to the life of the people with whom they live and the special provisions concerning legislation in particular are therefore proposed largely for the Scheduled Areas in Provinces other than Assam..... and the autonomous districts (Assam).[33]

(2) Special features of the Tribal Areas of Assam

The Joint Report of the two Sub-Committees had explained the special features of tribal areas of Assam. The special features of the Assam tribal areas, as compared with other tribal areas, were that these tribal areas were divided into large districts inhabited by single tribes or fairly homogeneous groups of tribes with highly democratic and mutually exclusive tribal organisations who had not assimilated much with the life and ways of other people in the provinces. These areas had hitherto been anthropological specimens and the Tribes living therein had their roots in their own culture, custom and civilization. Therefore, special constitutional safeguards were required for the Tribal People of Assam. In this regard the *Joint Report* of the two *Sub-Committees* said thus :

.....although certain features are common to all these areas, yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogeneous groups of tribes with highly democratic and mutually exclusive tribal organization and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other provinces. The Assam hill districts contain, as a rule, upwards of 90 per cent of tribal population whereas, unless we isolate small areas, this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organizations have in many places completely disintegrated. Another feature is that some of the areas in Assam like the Khasi Hills or Lushai Hills, show greater potentialities for quick progress than tribes in the other Provinces. They may also be distinguished by their greater eagerness for reform in which they have a dominant share than the apathy shown by the tribals of some other Provinces. Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line system, a parallel to which is not be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilization of the village land and forest. As regards the features

> common to tribal areas in other provinces, the Assam hillman is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommend Constitutional safeguards of various kinds.[34]

(b) Joint Recommendations of the two Sub-Committees

The joint report of the two *Sub-Committees* had stated that the future of the tribal areas lay in development and not in isolation. They recommended that the responsibility of these areas either in Assam or in other parts of India could be vested on the Government of India and the schemes of development was to be implemented by the State Governments. Their recommendations, in essence were as under :

(1) Provincial Governments could be advised to take such action as the establishment of *District Councils* and *Tribal Advisory Councils* as may be possible immediately to give effect to the policy recommended by the Sub-Committees on Assam and other than Assam.[35]

(2) Protection of tribal land and the social organisation of the tribals was an indispensable need. To facilitate the proper administration of the tribals, a *Tribes Advisory Council* with statutory functions was recommended for the Provinces of Madras, Bombay, the Central Provinces, West-Bengal, Bihar and Orissa.[36]

(3) The common proposals for Assam and other Provinces were that the inclusion of provisions of funds by the Centre and a separate financial statement in the budget for the Hill districts (Assam) and the Scheduled Areas (other Provinces). The inclusion of provisions for the control of moneylenders was another common feature of the joint recommendations.[37]

(iv) Constituent Assembly Debates

Unlike the main provisions of the Constitution, the recommendations of the two *Sub-Committees* (Sub-Committees on Assam and other than Assam) were not considered by the Constituent Assembly in its session of July 1947, when the broad principles of the Constitution were settled, since, as explained by Ambedkar, they were received too late. On the suggestion of the *Advisory Committee*, the *Drafting Committee* itself considered these proposals at the stage of drafting, and suitable provisions were included in the Draft Constitution of February 1948 on the basis of the reports of the two Sub-Committees. *Advisory Committee* had accepted all these recommendations and the *Drafting Committee* had incorporated the recommendations of the *Sub-Committee on other than Assam* in the *Fifth Schedule* and the recommendations of the Sub-Committee on Assam in the *Sixth Schedule* to the Draft Constitution. The reports of the two *Sub-Committees*, which had already been circulated to members of the *Constituent Assembly*, were formally placed before it on September 5-6 and November 4, 1948 for debate. Adopting the recommendations of the *Sub-Committees*, the scheme of the Draft Constitution[38] as proposed by Ambedkar, was in brief as follows :

Draft Article 190 :

(a) that the provisions of the Fifth-Schedule would apply to the administration and control of the Schedule Areas and Scheduled Tribes in the States other than Assam;

(b) that the provisions of the Sixth Schedule would apply to the administration of tribal areas in Assam.

(a) Constituent Assembly Debates on the Recommendations of the Sub-Committee on other than Assam

In the *Constituent Assembly Debates*,[39] there were considerable discussion on the scheme of administration proposed by the *Sub-Committee on other than Assam* which was, as mentioned earlier, incorporated in the *Fifth Schedule* to the Draft Constitution. Jaipal Singh (from Bihar), was the principal critic of the *Fifth Schedule*. He moved several amendments, but two of his main points were that the schedule should provide not only for the administration of the Scheduled Areas but also for the administration and control

of the Scheduled Tribes; and that the *Tribes Advisory Council* should be given an effective voice in the decisions of the State Government in the application of laws to Scheduled Areas and in the promulgation of regulations.[40] Yudhishtri Misra (from Orissa) moved a separate set of amendments having more or less the same objective as the amendments suggested by Jaipal Singh. Brajeshwar Prasad was in favour of the centre assuming full responsibility for the administration of these areas. He argued :

> What the tribals was is not a council but a guarantee by the Constitution that means of livelihood, free education and free medical facilities shall be provided for all the tribes..... Since the States were weak in economic resources they would not be in a position to shoulder this responsibility and the Centre should therefore take command of the areas.[41]

Biswanath Das (from Orissa) took an altogether different line. While fully recognising the need for doing everything possible for the betterment of the backward sections of the people, he was totally opposed to the whole concept of *Scheduled Tribes* and Scheduled Areas as separate entities. He characterised this as nothing short of creating racial issues in the place of the communal issues which had resulted the partition of the country.[42]

Munshi (from Bombay) replied to these criticisms. He pointed out that the *Adivasis* or tribes were many in number belonging to different ethnic, religious and social groups. He defined the object of the *Drafting Committee's* proposals as under :

> We want that the Scheduled Tribes in the whole country should be protected from the destructive impact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life; at the same time we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated for ever. The amendments which Mr. Jaipal Singh has moved will show that his object is to maintain them as little unconnected communities which might

> develop into different groups from the rest of the country. The result would be exactly to frustrate the common aim Mr. Jaipal Singh and ourselves have that these tribes should be absorbed in the national life of the country.[43]

Munsi turned down as an utter absurdity the proposal that the "Tribes Advisory Councils should be miniature senates with power to aid and advise the Governor in matters falling within the purview of the schedule".[44] It would not be possible, he said, for each Tribes Advisory Committee of small tribes to come to a common conclusion with regard to an elaborate Act of Parliament as to what provisions should or should not apply. Therefore, he said, the word "consulted" had been put in purposely in place of "advise".

After this explanation the amendments moved were rejected or withdrawn and the draft of the *Fifth Schedule* as proposed by Ambedkar was passed.

(b) Constituent Assembly Debates on the Recommendations of the Sub-Committee on Assam

The recommendations of the *Sub-Committee on Assam* were, as mentioned earlier, incorporated in the *Sixth Schedule* to the *Draft Constitution*. The Scheme suggested by the *Sub-Committee on Assam* was more detailed and designed to confer a considerable extent of autonomy, by establishing *Autonomous District Councils*, on the tribal population through their elected representatives. In the *Constituent Assembly Debates* two views were emerged for the protection of tribal interests in Assam. The first view supported the recommendations of the *Sub-Committee on Assam* for the adoption of a separate scheme with the model of *Autonomous District Councils* for the administration of tribal areas, and the second view preferred the assimilation of tribal people into culture of plainsmen and they suggested for introducing local self-government. On the question of the adoption of *Autonomous District Councils*, it was argued that this *Autonomous District* could be a weapon whereby steps were taken to keep the tribal people perpetually away from the non-tribals and the bond of friendship could be torn as under. During the British days, non-tribals were not allowed to introduce their culture among these people, because

the British wanted to keep the people of these areas as primitive as possible.[45] Shri Rohini Kumar Chaudhuri stated in unequivocal terms that :

> ..... When the I.C.S. officers came to India, their first concern was to find out some territories in the Province of Assam where there were no mosquitoes, there were not lawyers and where there were no public men. That was the first aim of the officers there, and whatever rules they framed for the administration of justice in these hill areas, whatever rules they framed for the conduct of business, these rules were framed in order to keep these tribal areas exclusively as a different country from the rest of India, where Europeans could live as Europeans, enjoying the same climate, enjoying the same authority and enjoying whatever it pleases them to get in India. That was the whole object. That was the object. Therefore, now but the Christian missionaries, and missionaries of no other religion, were allowed to visit those areas. There was no provision in the rules and regulations that a man should be defended by a lawyer or any one of that kind, even in a most serious criminal case, because he had no right to be defended. He can get special permission to be defended; but he had no right to be defended; not to speak of civil courts. No lawyers were allowed to remain in these hills and practice there. No other people were allowed to migrate to these areas except with the permission of the authorities. The British wanted to keep the people of these areas as primitive as possible.....[46]

Some members of the *Constituent Assembly* wanted to assimilate the tribal people into culture of plainsmen and they suggested for introducing *Local Self-government* rather than *Autonomous Districts* in the tribal areas. Because in the Autonomous Districts, Shri Kuladhar Chaliha said, an Act of Parliament could not be imposed on them unless they consented to it. Such a thing is impossible.[47] Supporting this view, Shri Brajeshwar Prasad confronted with the question "what will you say to the tribals if

they come and tell you that they want political autonomy and all the powers that have been vested in the District and Regional Councils?"[48] Shri Rohini Kumar Chaudhuri stated that :

> We want to assimilate the tribal people. We were not given that opportunity so far. The tribal people, however, much they liked, had not the opportunity of assimilation..... Here comes our friend Mr. Nichols Roy pleading for autonomous districts. Why do you want autonomous districts? My honourable Friend Mr. Bordoloi says that he wants autonomous districts in order to educate the tribal people in the art of self-Government. Why not given them local self-government itself?..... in none of these hills there is a municipality except in the Shillong administered areas. This Municipalities Act of Assam is not in force in any of the tribal areas. The Local Self-Government Act by virtue of which District Boards and Local Boards are formed is not in force in the tribal areas. If you really want to educate the people of the tribal areas in the art of self-government, why do you introduce this act in those areas? Why do you want autonomous districts for these Municipal purposes. Why not introduce the Municipalities Act? Then, they will themselves know the art of self-government. Why do you want to dissociate them from us by creating these autonomous districts which will remain autonomous? Do you want an assimilation of the tribal and non-tribal people, or do you want to keep them separate? If you want to keep them separate, they will combine with Tibet, they will combine with Burma, they will never combine with the rest of India.....".[49]

In reply of the proposal of assimilation that the hill tribes had to be brought to the culture of plainsmen, Mr. J.J.M. Nichols Roy said that the people of hills had their own culture which was sharply differentiated from that of plains. The social organisation was that of the village, the clan and the tribe and the outlook and structure were generally strongly democratic. India had to rise to that feeling or idea of equality and real democracy which tribal people had.[50] He further stated that :

It is said by one honorable gentlemen that the hill tribes have to be brought to the culture which he said "our culture" meaning the culture of the plainsmen. But what is culture? Does it mean dress or eating and drinking. If it means eating and drinking or ways of living, the hill tribes can claim that they have a better system than some of the people of the plains. I think the letter must rise up to their standard. Among the tribesmen there is no difference between class and class. Even the Rajas and Chiefs work in the fields together with their labourers. They eat together. Is that practised in the plains? The whole of India has not reached that level of equality. Do you want to abolish that system? Do you want to crush them and this their culture must be swallowed by the culture which says one man is lower and another higher. You say, "I am educated and you are uneducated and because of that you must sit at my feet". That is not the principle among the hill tribes. When they come together they all sit together whether educated, or uneducated, high or low. There is that feeling of equality among the hill tribes in Assam which you do not find among the plains people.[51]

Mr. J.J.M. Nichols Ray further added :

I would like very much if Parliament will appoint a committee to see these tribal areas. Perhaps they will see that in some places they are so far advanced that the whole of India must follow their example. In those areas there is no difference between man and woman : the women does work, goes to the bazaars and does all kinds of trade. And she is free. In the plains the women is just beginning to be free now, and is not free yet. But in some of the hills districts the women is the head of the family; she holds the purse in her hand, and she goes to the fields along with the man. Women and men are not ashamed of any kind of labour there. In the plains of Assam there are some people who feel ashamed to dig earth. But the hillman is not so. Will you want that kind of culture to be

> imposed upon the hillman and ruin the feeling of equality and the dignity of labour which is existing among them? Why talk of culture. There is some kind of culture in the hill areas which is far better than what is obtaining in the plains. Therefore the Sub-Committee on the tribes of Assam has decided that this would be the best method of allowing these people to grow according to their culture and according to their genius and at the same time to become unified with the whole of India.[52]

Dr. B.R. Ambedkar, in support of the creation of the *Autonomous District Councils* in Assam, said that the position of the tribals in Assam stood on a somewhat different footing from the position of the tribals in other parts of India and stoods on a somewhat analogous to the position of the Red Indians in the United States as against the white emigrants there. The creation of *Autonomous District Councils* were to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. Those who had based their criticism over the creation of the District Councils, had altogether failed to understand the binding factors which the members of the Drafting Committee had introduced in this Constitution. Dr. Ambedkar mentioned that:

> .....the tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilization and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States as against the white emigrants there. Now, what did the United

> States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations or Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so to say, within the range of the laws made by the white people for white persons and for the purpose of the civilization.[53]

After this explanation the draft of the *Sixth Schedule* eventually adopted with some amendments moved by Ambedkar.

It emerges from the foregoing discussion that during Constitution making two types of political processes have been recommended for the governance and administration of tribes in India : one was to establish *Tribes Advisory Councils* under the draft *Fifth Schedule* to the Constitution and another was to establish *Autonomous District Councils* under the draft *Sixth Schedule* to the Constitution. The responsibility of tribals either in Assam or in other parts of India was vested on the Government of India and the scheme of development was to be implemented by the State Governments.

II. RECOGNITION OF POLITICAL PROCESSES IN REALIZATION OF THE RIGHTS OF INDIGENOUS PEOPLES (REGARDED AS TRIBALS) IN INDIA

The *Constitution of India*, paid special attention for the tribals. It went into the subject in an elaborate and somewhat complicated way. For the protection and recognition of separate administrative processes for tribals, a part in the Constitution, viz., Part X was included. The draft Article 190 was numbered as Article 244 in the Part X of the Constitution. The original Article 244 was as follows :

244. Administration of Scheduled Areas and Tribal Areas —

(1) The provisions of the Fifth Schedule shall apply to the administration and Control of the Scheduled Areas and Scheduled Tribes in any States specified in Part A and B of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

Thus, the original Article 244 had provided that the provisions of the *Fifth Schedule* were applicable in any States other than the State of Assam and the provisions of the *Sixth Schedule* were applicable in the State of Assam. Subsequently, the Article 244 undergone many changes through Constitutional amendment and Parliamentary legislations. The State of "Meghalaya" was incorporated to the Article 244 by the *North-Eastern Areas (Reorganisation) Act, 1971*. The States of "Tripura" and "Mizoram" were incorporated to the Article 244 through the *Constitution (Forty-nineth Amendment) Act, 1984* and the *State of Mizoram Act, 1986* respectively. The present Article 244 reads as under :

244. Administration of Scheduled Areas and Tribal Areas —

(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Schedule Areas and Schedule Tribes in any State other than the States of Assam, Meghalaya[54], Tripura[55] and Mizoram[56].

(2) The provisions of the Sixth Schedule shall apply to the administration of tribal areas in the State of Assam, Meghalaya,[54] Tripura[55] and Mizoram.[56]

According to the joint recommendations of the *Sub-Committee on Assam* and the *Sub-Committee on other than Assam* separate financial provisions were adopted to the Constitution. Article 275(1) provides for grants-in-aid from the Union of India (both capital and recurring) to meet the costs of schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State. A special provision to the Article 275(1) refers to Assam, Meghalaya, Tripura and Mizoram and provides for grants-in-aid (both capital and

recurring) equal to the excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of tribal areas..... the cost of such schemes of development as may be undertaken by the State with the approval of the Government of India for purpose of raising the level of administration, etc.

Thus two types of political processes for the administration of tribals have been recognised with separate financial provisions under the *Constitution of India*, one is under the *Fifth Schedule* and another is under the *Sixth Schedule*. The *Fifth Schedule* is applicable to any State other than the States of Assam, Meghalaya, Tripura and Mizoram and the *Sixth Schedule* is applicable to the States of Assam, Meghalaya, Tripura and Mizoram. Now we propose to throw light on these two political processes incorporated under the *Fifth* and *Sixth Schedule* to the Constitution.

(A) Fifth Schedule to the Constitution

The *Fifth Schedule* to the Constitution deals with the provisions as to the administration and control of Schedule Areas and Scheduled Tribes. The *Fifth Schedule* contains 7 paragraphs, Paragraph 1 deals with the interpretation of the expression "State" used in this schedule, Paragraph 2 relates to the Executive power of a State in Scheduled Areas and Paragraph 3 prescribes the Governor to report the President regarding the administration of Scheduled Areas. Paragraph 4 deals with the *Tribes Advisory Council*, Paragraph 5 with applicability of law to Scheduled Areas, Paragraph 6 with the meaning of the expression " Scheduled Areas" and Paragraph 7 prescribes the procedure for the amendment of the Schedule.

(i) Scheduled Areas

According to Paragraph 6 of the *Fifth Schedule*, the expression *Scheduled Areas* means such areas as the President may by order declare to be *Scheduled Areas*.[57] The President may at any time by Order direct that the whole or any specified part of a *Scheduled Area* shall cease to be a Scheduled Area[58] or a part of such an area, increase the area of any *Scheduled Area*, alter any *Scheduled Area*, rescind any order or orders made under this Paragraph and make fresh orders redefining the areas which are to be Scheduled Areas.

(ii) Executive Power of the State and Union

Paragraph 2 of the *Fifth Schedule* provides that the executive power of a State extends to the *Scheduled Areas* therein. But a limitation is imposed on this executive power of the State by Paragraph 3 which provides that the executive power of the Union shall extend to giving directions to the State regarding the administration of *Scheduled Areas.*

(iii) Tribes Advisory Council

According to Paragraph 4 of the *Fifth Schedule, Tribes Advisory Councils* are to be established in each State having *Scheduled Areas* and, if the president directs, also in any State having Scheduled Tribes but not *Scheduled Areas.* A *Tribes Advisory Council* is to be consisted with not more than twenty members of whom three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. If the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the *Tribes Advisory Council* to be filled by such representatives, the remaining seats shall be filled by other members of those tribes. The duty of the *Tribes Advisory Council* is to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State. The Governor is to make rules with respect to the following matters:

1. the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants.
2. the conduct of its meetings and its procedure, and
3. all other incidental matter.

(iv) Law applicable to Scheduled Areas

Under Paragraph 5 of the *Fifth Schedule*, the Governor is authorised to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or shall apply only subject to exceptions or modifications. The Governor is also authorised to make regulations to prohibit or restrict the transfer of land by, or among members of, the Scheduled Tribes, regulate the allotment of land, and regulate the business of money-lending. All such regulations by the Governor or Ruler

must have the assent of the President. The Governor makes Regulations after consulting the *Tribes Advisory Council* and submits them to the President for assent.

(v) Amendment of the Fifth Schedule

Paragraph 7 of the *Fifth Schedule* provides that Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule. This amendment shall not be deemed to an amendment of the Constitution for the purposes of Article 368.

Thus the Fifth Schedule provides a political process for the governance and administration of *Scheduled Areas* and Scheduled tribes in any States other than Assam, Meghalaya, Tripura and Mizoram. The Schedule provides for the establishment of *Tribes Advisory Council* in each States having Scheduled Areas or having Scheduled Tribes.

(B) Sixth Schedule to the Constitution

(i) Scheme of the Sixth Schedule

Sixth Schedule to the Constitution provides a detailed scheme of administration for tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. The Schedule contains 21 Paragraphs. By Paragraphs 1 and 20 the whole tribal area is divided into autonomous districts, and autonomous district in turn be divided into autonomous regions. Paragraphs 2 to 17 deal with the administration of autonomous districts and autonomous regions. District Councils and Regional Councils are to be constituted under Paragraph 2. Paragraph 3 gives power to the District and Regional Councils to make laws with respect to matters specified therein. Paragraphs 4 and 5 deal with administration of justice. Paragraph 6 gives powers to the District Council to establish, construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and water ways. Paragraphs 7, 8 and 9 deal with financial matters. Paragraph 10 gives power to the District Councils to make regulations for the control of money lending and trading by non-tribals. Paragraph 11 provides for publication of laws, rules and regulations made under the Schedule. Paragraph 12 deals with the application of Acts of Parliament and the Legislature of the State to autonomous districts

and autonomous regions. Paragraph 13 deals with the budget while Paragraph 14 provides for the appointment of a commission by the Governor at any time to inquire into and report on the administration of autonomous districts and autonomous regions. Paragraph 15 gives power to the Governor to annual or suspend any Act or Regulation of District and Regional Councils under certain contingencies and also gives him power to suspend the Council and assume all or any of its powers to himself subject to such order being placed before the State Legislature. Paragraph 16 gives power to the Governor to dissolve a District or Regional Council on the recommendation of the Commission appointed under Paragraph 14 and order a fresh election and in the meantime to assume the administration of the area to himself subject to the previous approval of the State Legislature. Paragraph 17 deals with the forming of Constituencies for the State Legislative Assembly. Paragraph 19 deals with transitional provisions and Paragraph 21 with the amendment of the Schedule.

(a) Tribal Areas

There are nine tribal areas mentioned in the Table appended in the Paragraph 20 of the *Sixth Schedule* within States of Assam, Meghalaya, Tripura and Mizoram. In Assam there are two tribal areas (1. The North Chachar Hills District, 2. The Karbi Anglong District); in Meghalaya three, (1. Khasi Hills District, 2. Jaintia Hills District, 3. The Garo Hills District); in Tripura only one (1. Tripura Tribal areas District); and in Mizoram three (1. The Chakma District, 2. The Mara District, 3. The Lai District) tribal areas.

(b) Autonomous District and Regional Councils

The tribal areas (mentioned in the Table to the *Sixth Schedule*) are to be autonomous districts. If there are different Scheduled Tribes in an autonomous district, the Governor may divide the district into autonomous regions.[59] For the administration of an autonomous district, there is to be a District Council and for the administration of an autonomous region, there is to be a Regional Council. Both the Councils (District and Regional) are incorporated bodies, having a perpetual succession. In an autonomous district with a Regional Council, the District Council shall have only such powers as may be delegated to it by the Regional Council, in addition to the powers specifically conferred by the Sixth Schedule

with respect to the area within its jurisdiction. The District Council is to consist of not more than thirty members, out of whom not more than four shall be nominated by the Governor and the rest to be elected on the basis of adult suffrage. The term of elected members of the District Council is five years, while the term of nominated members is at the pleasure of the Governor.[60]

(c) Legislative Powers of the District and Regional Councils

The District Council for an autonomous district and the Regional Council for an autonomous region are given powers to make laws with respect to the following matters :

(a) the allotment, occupation or use, or the setting apart of land;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of *jhum* or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of chiefs or headmen;

(h) the inheritance of property;

(i) marriage and divorce;

(j) social customs[61]

All laws made by the Regional Council or District Council shall, however, have no effect unless assented to by the Governor.[62] If any law or regulation made by the District Council or by the Regional Council is repugnant to any law made by the State Legislature; it will be void to the extent of repugnancy and the law made by the legislature of the State shall prevail. The President of India may direct that any Act of Parliament shall not apply to an autonomous district or region.[63] These provisions were inserted

in the Schedule by the *North-Eastern Areas (Reorganisation) Act, 1971*. Prior to that, an Act of the Legislature of the State of Assam with respect to matters on which the District Council or the Regional Council had the power to make law did not apply to an autonomous district or region, unless the District Council or the Regional Council so directed. Further, the Governor of the State could exclude the operation of any Act of Parliament or of the State Legislature in these areas.

(d) Power to make Regulations

(1) Regulations for Control of Money-lending

The District Council of an autonomous district is given powers to make regulations for the control of money-lending or trading within the district by person other than Scheduled Tribes resident in the district. Such regulations may prescribe who can carry on the business of money-lending, the maximum rate of interest which may be charged by money-lender, maintenance of accounts by money-lenders, inspection of such accounts by officers appointed on behalf of District Council. All regulations made by the District Council, however, require to pass by a majority of not less than three-fourths of the total membership of the District Council and all such regulations shall have no effect unless assented by the Governor.[64]

(2) Regulations for managing Primary Schools, etc.

The District Council for an autonomous district may establish, construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district. The Council with the previous approval of the Governor, make regulations for regulation and control thereof and, in particular may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.[65]

(e) Administration of Justice

(1) Village Councils or Courts

The Regional Council and the District Council may constitute village councils or courts for the trial of suits and cases

between the parties all of whom belong to Scheduled Tribes within the areas of their jurisdiction. The Regional Council or any court constituted on that behalf or the District Council or any court constituted on that behalf, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court[66].

The Regional Council and District Council, may with the previous approval of the Governor make rules regulating the Constitution of village Councils and Courts and their powers, procedure to be followed by, the enforcement of the decisions or orders and all other ancillary matters for the carrying out the administration of justice.[67] In suits and cases decided by the village councils or courts the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, do not apply.[68] These courts do not try cases arising out of special laws or cases relating to offences of a serious nature (punishable with death, transportation for life or imprisonment for a term not less than five years). The Governor may, however, extend the jurisdiction of these courts to decide such cases by conferring the powers under the Civil Procedure Code and the Criminal Procedure Code for these cases.[69]

(2) Jurisdiction of the High Court and Supreme Court

The jurisdiction of the Supreme Court and High Court have been retained as in other cases and no other court except the High Court and Supreme Court shall have jurisdiction over such suits or cases.[70] The High Court also exercise such jurisdiction over the suits and cases as may be specified by the Governor.[71]

(f) Power of Taxation, Share of Royalties and Funds

The District and Regional Councils have been given certain powers of taxation also. These councils have power to assess and collect revenue in respect of such lands within their respective areas. These councils have also power to levy and collect taxes on lands, buildings and tolls on person resident within such areas. Besides these powers, the District Council have the power to levy and collect taxes on professions, trades, callings and employments; on animals, vehicles and boats; on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and taxes for the maintenance of schools, dispensaries or roads.[72]

The royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of minerals are to be shared between State Government and District Council. If any dispute arises as to the share of such royalties, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be final.[73]

There shall be constituted a District Fund and a Regional Fund to which shall be credited all moneys received respectively by the District and Regional Councils. The Comptroller and Auditor-General shall audit the accounts of the District and Regional Councils and the reports of such accounts shall be submitted to the Governor. The Governor may make rules for the management of funds.[74]

(g) Annulment or Suspension and Dissolution

The Governor may annual or suspend an Act or resolution of a District or Regional Council, if he is satisfied that such Act or resolution is likely to endanger the safety of India or likely to be prejudicial to public order. He may also take necessary steps including the suspension of the council and assume himself all or any of the power of the council.[75]

On the recommendation of a Commission appointed to examine and report on any matter relating to administration of autonomous districts and regions, the Governor may dissolve a District or Regional Council and direct that :

(a) a fresh election shall be held, or

(b) assume himself the administration of such area or place for a period not exceeding twelve months.[76]

Besides the abovementioned grounds, if at any time Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of the *Sixth Schedule*, he may, by public notification, assume to himself all or any of the functions or powers of the District Council or Regional Council for a period not exceeding six months. The Governor may declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf.

Thus the *Sixth Schedule* sought to protect the autonomy of tribal areas in four basic ways :

(a) by creating district councils for autonomous tribal districts;

(b) by giving administrative and legislative powers in specified matters to district councils;

(c) by providing for the non-application of the laws of the concerned State of these areas unless the district council decided to apply an Act; and

(d) by empowering the Governor not to apply any Act of Parliament or an Act of the Legislature of the State to an autonomous district. Thus, the idea is that in certain important matters the autonomy of the tribals should be maintained.

It emerges from the scheme of the *Sixth Schedule* that it provides another political process for the governance and administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. The distinction between two political processes recognised under the *Fifth* and *Sixth Schedules* are, while under the *Fifth Schedule, Tribes Advisory Council* is to be established which is an advisory body to advise Governor on such matters pertaining to the welfare and advancement of the Scheduled Tribes; and under the *Sixth Schedule, Autonomous District Council* is to be established which is an administrative as well as legislative body.

(ii) Judicial Innovations on Sixth Schedule

The enactment of special provisions under the *Sixth Schedule* to the Constitution for the governance of the tribal areas of North-East India necessarily raised some problems and the problems are inherent in the *Sixth Schedule* which were dealt with by the Supreme Court and High Court. Although a few number of cases came before the courts, the kind of cases are necessarily varied. In these cases, however, the courts have evolved various principles with respect to the nature of District Council, scope of its law making power, power of the Governor, applicability of State or Central legislations, etc.

(a) Nature of the District Council

The Supreme Court determined the nature and scope of the power of the District Council in *T. Cajee* v. *U. Jormanik Siem.*[77] The facts of the case were that the respondent, U. Jormanik Siem, was Siem of Mylliem siemship (chief) in the United Kasi and Jaintia Hills District and was elected as such by the Myntries and the people according to the custom in 1951. Subsequently, in June 1952, the autonomous District Council was constituted for the said District under the Sixth Schedule to the Constitution. Hence, the Siemship was brought under the District Council, but the respondent continued to discharge the administrative and judicial functions. In July 1959, the respondent was suspended by the Executive Committee of the District Council.

In the High Court the respondent contended that he could not be removed from his office or be suspended by the Executive Committee of the District Council, as the Siem once appointed could not be removed from his office except through a referendum of the people according to custom. Therefore, until such custom was changed by legislation passed by the District Council with the concurrence of the Governor. The High Court passed an order staying the operation of the order of suspension on the ground that there could be no appointment or removal by the District Council without a law having been passed on that behalf.

The Supreme Court reversed the High Court Order and held that the executive committee of the District Council could remove respondent even in absence of the law framed on that behalf. Because the District Council is both administrative as well as a legislative body[78] and the respondent no more than administrative officer appointed by the District Council and working under its control. Besides this, the administrative powers of the chiefs as they existed before January 26, 1950, came to an end with the coming into force of the constitution, Wanchoo, J. (with Sinha, Kapur, Gajendragadkar, JJ.) observed as under:

> The Sixth Schedule vested the administration of the autonomous districts in the Governor during the transitional period and thereafter in the District Council. The administration could only be carried on

> by officers like the Sime or Chief and others below to him, and it seems to us quite clear, if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the administration being vested in them to appoint officers and others to carry on the administration. Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under Paragraph 19(1) (b) or till the District Council passed laws under para 3 (1) (g).[79]

Subba Rao, J., however, had considerable and serious doubts on the question "whether, when the Constitution confers, on an authority, power to make laws in respect of a specific subject matter, the said authority can deal with the same subject matter without making such a law in its administrative capacity."[80] Although he was agreed with conclusion of the majority, he, however, not expressed any opinion on this question. Even one can conclude that the majority was in right direction as immediate after the suspension of the respondent, the United on October 16, 1959, an Act Known as *United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act* was passed and, therefore, there was a valied law empowering the District Council to remove a Siem, and, as the enquiry in question was only at its initial stage, it can hereafter be validly conducted under the provisions of the said Act. However, the principle evolved in this case was that the District Council is both an administrative as well as a Legislative body.

(b) Limits and Scope of the Legislative Power

The limits and scope of the law making power conferred on the District Council was examined by the Supreme Court in *District Council of U.K. & J.H.* v. *Sitimon.*[81] In this case the constitutional validity of Section 3 of the *United Khasi-Jaintia Hills District (Transfer*

of Land) Act (4 of 1953) was challenged on the ground that the said Section 3 disallowed transfer of land from a tribal to non-tribal or between two non-tribals with in District Council Area.

In the High Court respondent had raised the point that the impugned Act is *Ultra Vires* in so far as it is an enactment on the subject of transfer of land which is beyond the scope of law making power conferred on District Council. Paragraph. 3(1) (a) of the Sixth Schedule does not empower the District Council to legislate with respect to transfer of land. The expression "allotment, occupation, or use, or setting part of land"[82] in paragraph 3(1) (a) is clearly indicative of restrictive power of the District Council only to make laws with respect to actual use or occupation. But at its preamble shows that impugned Act was enacted because it was considered "necessary to make provisions in the Autonomous District...with respect to the transfer... of land...".[83] Section 3, therefore, provided that "No land within the District shall be sold, mortgaged, leased, bartered, gifted or otherwise transferred by tribal to a non-tribal or by a non-tribal to another non-tribal...".[84] The argument of the Attorney General was based on the legislative history of the Sixth Schedule where he emphasised that the real object of protection of tribal areas is out of fear of exploitation of tribals by non-tribals. His argument, however, did not find acceptance, the High Court struck down the Section 3 as it was beyond the competence of the District Council and also offending Art. 14 of the Constitution.

Affirming the view of the High Court,[85] the Supreme Court (through Dua, J. with Sikri, Mitter Vaidailingam, Reddy, JJ.) determined the limits of law making power of the District Council under Paragraph 3(1) (a) of the *Sixth Schedule* and held that the words" allotment, occupation or use, or setting apart of land" in Para. 3(1) (a) for the purposes mentioned therein without using words like "transfer" or "alienation" is clearly indicative of the Constitution makers intention to restrict power of the District Council only to make laws with respect of actual use or occupation of the land allotted or set apart from the purposes stated therein. It was not intended to extend to "transfer of land". There is no cogent ground why such expression could not be used in Para. (3) (1) (a) also, if power to make laws with respect to transfer of land was intended to be conferred on the District Council.[86]

About the scope of the law making power of the District Council, the Supreme Court further held that the District Council unlike the Parliament and the State legislatures are not intended to be clothed with plenary power of Legislation. Their power to make laws is expressly limited by the provisions of the *Sixth Schedule* which has created them and they can do nothing beyond the limits which circumscribe their power. It is beyond the domain of the Courts to enlarge constructively their power to make laws.[87]

It may be submitted that the decision of the Court has gone against to the entire history and purpose of the Sixth Schedule. The main Object of the protection was to protect the lands from non-tribals with the self- rule or autonomy which is ultimately frustrated.

(c) Competency of the District Council to Impose Royalty

The question whether the Autonomous District Council is competent to impose royalty and levy fees was examined in *District Council of the Jowai v. Dwet Singh.*[88] The facts of the case were that the Appellant, the Jowai District Council, issued a notification to the respondent, Dwet Singh, levying roylty in exercise of its power under the *United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958,* on red pine, white pine and long pine timber grown in the private forests situated within the jurisdiction of the District Council. The respondent challenged the competence of the District Council to levy the royalty on the timber that came from private forests.[89]

The respondent contended that the royalty, in question, which was in the nature of tax was not leviable by the District Council since it had no authority under the Constitution. On behalf of the District Council it was contented that since the private forests were also under the management and control of the District Council under the provisions of law in force in that area, it was open to it to levy the royalty even though it may be in the nature of tax.[90]

The court held that the royalty on timber brought from private forests imposed by the District Council is in the nature of tax, which the District Council not competent to impose. Although there is no express provision to levy such fees, the District Council

can levy fees. In absence of any evidence showing the expenses incurred by the District Council towards the services rendered and the total amount of royalty realised by it, the levy cannot also be held to be fees. The Court observed :

> What was sought to be recovered by District Council by the notification issued under the 1958 Act was not royalty, since the forest did not belong to the District Council and was a private forest. The levy in question was a compulsory exaction of money by a public authority for public purposes enforceable by law and is not a payment for services rendered. In pith and substance it is a tax on forest produce grown on private lands. The District Council has no power to levy such a tax on forest produce under paragraph 8 of the Sixth Schedule to the Constitution. The levy was not covered by either of the two kinds of taxes mentioned in clauses (a) and (c) of paragraph 8(3). It also did not come within sub-paragraphs (1) and (2) of paragraph 8 of the Sixth Schedule to the Constitution which authorised levy of tax on lands on the ground that the trees were growing on the land. It was act in the nature of land revenue. It cannot be sustained as any other kind of tax on land since the royalty payable has no reference to the extent of the land and the nature of the land and its potentialities.[91]

(d) Power of the Governor

The extent and scope of the power of Governor under *Sixth Schedule* was challenged in *Edwingson* v. *The State of Assam*.[92] The facts of the case were that the Governor of Assam appointed a commission under Paragraph 14(1) of the *Sixth Schedule* on the 26th August 1963. The Commission was entrusted "to examine and report in the matter of (i) creation of a new autonomous district for the people of Jowai Sub-Division of the United Khasi-Jaintia Hills Autonomous District, and (2) exclusion of the area from the United Khasi-Jaintia Hills Autonomous District"[93] The commission submitted its report on the 20th January 1964 and recommended "the creation of a new Autonomous District Council for the Jowai Sub-Division of the United Khasi-Jaintia Hills Autonomous District by excluding the areas comprising the area of the said Sub-Division

from the United Khasi-Jaintia Hills Autonomous District".[94] The report was placed on 25th September 1964 by the Minister of the Tribal Areas and Welfare of the Backward classes before the Assam Legislative Assembly along with an explanatory memorandum. The Assembly passed a resolution, approving of the action proposed to be taken. Thereafter, a notification was issued by the Governor of Assam on the 23rd November 1964, by which he pleased "to create a new Autonomous District to be called the Jowai District".[95]

In the High Court,[96] the appellant challenged the Constitutional validity of this notification for the following two grounds : (1) that the notification was invalid and *ultra vires* to powers of the Governor, and (2) that in exercising his power, the Governor has contravened the mandatory requirements prescribed by Para. 14 of the *Sixth Schedule.* Even if it was assumed that the Governor had the power to issue the impugned notification, in as much as the mandatory provisions of the Para. 14 had not been complied with, the notification was invalid. The respondent, the State of Assam, disputed both contentions of the appellant and argued that the notification had been issued by the Governor in exercise of the powers conferred on him by Para. 1(3) of the *Sixth Schedule* and that all the relevant requirements of Para. 14 had been complied with.

Affirming the High Court decision, the majority of the Supreme Court, speaking through Mr. Chief Justice Gajendragadkar, held that in this case no legislation was necessary to supplement the power of the Governor to rearrange the boundaries within the "autonomous area" defined in the table to Paragraph 20. If it wishes to do so, Parliament is free to pass an amendment under Paragraph 21 curtailing the Governor's power under Paragraph 1, but until that time both the Governor and Parliament may exercise concurrent power. Splitting an autonomous district into two new autonomous districts will not add or subtract from the total area described in the part A of the table appended to Paragraph 20. Any change in Paragraph 20(2) is a logical outcome of the exercise of the powers allotted to the Governor by Paragraph 1(3). The court also held that Governor is not prohibited by Paragraph 14(2) from giving the report on creation of an autonomous district to his council of ministers for

their advice before sending his own recommendations to the state legislature.

Mr. Justice Hidayatullah, however, dissented on two main grounds : (1) the Governor does not possess power under Clauses (c), (d) and (e) of Paragraph 1(3) to amend Paragraph 20. No agency other than Parliament can repeal or amend any part of the Constitution of India. In regard to creation of "a new autonomous Jowai District", the Governor's notification is no doubt one of the means of achieving the change, but valid change can be effected only by supplemental legislation, (2) the facts of the case do not show that there was a recommendation by the Governor as required under *Sixth Schedule*[97] and therefore, he had failed to exercise his own responsibility. The crucial point, Hidayatullah, J., described thus :

> The Governor of Assam drew up its proposals which were sent to the Governor who merely noted on the file "seen, thanks" and returned the papers which were then placed before the Legislature of the State and Legislature of the State approved the proposals by a resolution.[98]

The judgment and the dissenting opinion raise questions : (1) Is parliamentary legislation essential to make effective the public notification issued by the Governor in compliance with Paragraph 1(3) of the *Sixth Schedule*? The preferred view, to not only the words but also the values of the Constitution, is to require that the Union Parliament should amend the *Sixth Schedule* under Paragraph 21 whenever any change is to be made in the terms of Paragraph 20. For the welfare of the inhabitants of the tribal areas, there should be careful consideration by the legislative branch of the Union Government before any change is effected in the literal provision of the Constitution, and (2) Are the requirements of Paragraph 14(2) a necessary prerequisite to the issuing of a notification by the Governor under Paragraph 1(3)? And if so, is the Governor's recommendation and his massage "seen, thanks" written on the report sufficient to discharge his responsibility under Paragraph 14(2) of the *Sixth Schedule*? Does it amount to a recommendation of the Governor?[99]

In *State of Assam* v. *K.B. Kurkalang*[100], the question of the scope and extent of the power of Governor under Paragraph 19(1)(b) of the *Sixth Schedule* was raised. In this case the respondents challenged the validity of the *United Khasi-Jaintia Hills Districts (Application of Laws) Regulation, V of 1952* promulgated by the Governor of Assam under Paragraph 19(1)(b) of the *Sixth Schedule* on the ground that the Governor had issued the said Regulation through the notification dated September 8, 1961, under the said provision 19(1)(b) of the *Sixth Schedule* which are transitional, that is, until a District Council for the area was constituted, which was done in June 1952 and hence the notification was void as it was issued by one who had no authority to issue it.

The High Court held that once such a council was set up, the Governor could not exercise the power under Paragraph 19, that any regulation made thereunder could remain effective upto that period only, and that therefore, the notification had no effect.[101]

Following the principles laid down in earlier decisions,[102] the Supreme Court reversed the decision of the High Court. Shelat, J. (with Sikri, Dua and Mitter, JJ.) speaking for the court observed that the Regulation promulgated by the Governor does not automatically cease to have effect even the Regulation brought into force after the District Council is constituted and the power of the Governor to bring into force the laws set out in the schedule will cease to have effect only when the Regulation is removed from the statute.[103] So far as the nature and scope of the power conferred on the Governor under Paragraph 19(1)(a) of the *Sixth Schedule*, the court held that, it is manifestly a legislative power and is without any limitations even in regard to matters in respect of which he can promulgate a Regulation. The only limitation to that power is the requirement of the presidential assent without which the regulation would have no effect.[104] The Supreme Court further interpreted the Paragraph 19 of the Sixth Schedule with the following words :

> It is true that the power is to be exercised "until a District Council is so constituted for an autonomous district". But that only places a limit to the period until which it is exerciseable, and not any limitation upon the extent of the power or the period during

> which a regulation made by him would be in force once it is validly made. Further, there is no provision either in paragraph 19 or paragraph 12 suggesting that such a regulation is to remain in force and have effect only until a District Council is constituted. In the absence of any such limitation, there is no warrant for saying that a regulation ceases to have effect once the District Council is constituted. The words "such a District Council is so constituted" have reference to the period during which the legislative power of the Governor is to ensure and not to the period upto which the regulation which is made during the time that the power ensures is to remain in force. Like every other pice of legislation, the regulation contains to operate and remains effective until it is either annulled or repealed under some legislative power.[105]

In *Satyeswar* v. *Government of Assam*,[106] the High Court examined the nature of power of the Governor conferred under Para. 2(6-A) of the *Sixth Schedule* is to be exercised. The facts of the case were that four nominated members of the Mikir Hills District Council were terminated by the notification of the Government of Assam dated 6th December 1972. The notification was challenged on the following Grounds : (1) Before issuing this notification, it was never placed before the Governor, (2) As a nominated member of the District Council holds office at the pleasure of the Governor under Para. 2(6-A) of the *Sixth Schedule*, such pleasure is to be exercised by the Governor himself and can not be delegated by him to any other person or be exercised by any one else on his behalf, and (3) The power to remove a nominated member under Para. 2(6A) is vested not in the State Government, but in the Governor in his discretion and accordingly if the matter is not submitted to the Governor, such order will not be a valid one. All these contentions, as aforesaid, were decided by the High Court by examining the question whether the power of the Governor under Para 2(6A) of the Sixth Schedule is to be exercised in his discretion or has to be exercised by him as a Constitutional head of the State of Assam, acting with the aid and advice of his council of ministers. The court dismissed all contentions.

So far as the question of nature of power of the Governor, the High Court held that, such power is guided with the aid and

advise of the council of ministers and it is not the discretionary power of the Governor. Mr. D.M. Sen, J. (with Mr. P.K. Goswami, C.J.) held that "the power of the Governor under Para. 2(6.A) is to be exercised by him not in his discretion but as a constitutional head of the State acting with the aid and advise of his council of ministers"[107]. With respect to the relation between the State legislative authority, executive authority and the district council, the court observed :

> The scheme of the Sixth Schedule shows that the State Legislature has a sort of overall superintendence over the District Councils and that the executive authority of the State extends to the autonomous districts and regions. Consequently, the Governor exercises his functions under the Sixth Schedule, as respects these areas with the aid and advice of his Council of Ministers, unless he is expressly or by necessary implication required to act in his discrition. There is no implied discretionary power of the Governor in the Schedule with regard to the exercise of his functions in relation to autonomous districts or regions, except possibly in the making of his recommendation under para. 14(2), para. 9(2), of course, provides expressly for exercise of the Governor's discretion thereunder.[108]

It can not be said, the Court further observed, that the executive power of the State of Assam does not extend to the autonomous districts or regions with regard to the matters specified in paragraphs 2(6) and (7) and 3(1) on the ground that State Legislature has no competence to make laws on those matters. No doubt, under paragraph 3(1) of the Schedule, the Regional Council or the District Council, as the case may be, has been vested with the competence to make laws with regard to matters specified therein. But from this, it does not follow that the State Legislature is debarred from making laws on those matters as regards any autonomous area within the State of Assam. The legislative powers of the State Legislature under Articles 245 and 246 of the Constitution are not taken away by paragraph 3(1) of the Schedule with regard to the matters specified therein; if that were the intention of the Constitution makers, the word "exclusive" would

have been used in paragraph 3(1), as in Article 246(1) and (3) of the Constitution.[109] Merely because there is no provision in the Sixth Schedule on the lines of paragraph 2 of the *Fifth Schedule* which extends the executive power of the State to the Scheduled area it can not be said that the executive power of the State is not intended to extend to the autonomous districts and regions. The fathers of the Constitution most probably thought that since under paragraph 3 of the *Fifth Schedule*, the executive power of the Union has been extended to the giving of directions to a State as to the administration of the Scheduled areas therein, a provision in clear terms, saving the executive power of the State with regard to the Scheduled areas therein should be incorporated and that is possibly why paragraph 2 was required to be inserted in the *Fifth Schedule*. In the *Sixth Schedule*, there is no provision whereby the executive power of the Union has been extended to the administration of the autonomous districts specified in Part I of the Table appended thereto, and there was thus no need to have a paragraph on the same lines on in paragraph 2 of the *Fifth Schedule*.[110]

So far as the question whether the functions exercised by the Governor are the functions of the State or the functions of the Governor, the Court held that, they have equally to be exercised with the aid or advise of the Council of Ministers except in so far as he is by or under the Constitution required to exercise them in his discretion. Therefore, even if it is assumed that the powers exerciseable by the Governor under the *Sixth Schedule* with regard to the autonomous districts and regions are not in discharge of his executive functions of the State, but the executive functions of the Governor, such functions are subject to the exceptions of paras. 9(2) and 14(2) must, in view of Articles 163(1) of the Constitution, be exercised with the aid and advice of the Council of Ministers.[110]

Again the Court viewed, about the question whether the Governor acts with his personal capacity, that paragraph 2(6-A) of the Schedule certainly does not empower the Governor to act in his personal capacity simply because the expression "Governor" occurs therein. If the Governor has to act in his personal capacity whenever in any Article or provisions of the Constitution, the expression Governor occurs, it will upset the whole Constitutional structure envisaged at the time when the Constitution was passed and will make the Governor a kind of a director. To read every

Article of the Constitution in which the expression Governor occurs on conferring powers upon the Governor in his personal capacity without reference to the cabinet would be constitutionally incorrect.[111]

The power of the Governor to taking over administration of the District Council was examined by the High Court in *Holiram Terang* v. *State of Assam*.[112] In this case the main grievance of the writ petitioner was that the Governor by invoking powers under the paragraph 16(2) of the *Sixth Schedule* to the Constitution tookover the administration of the District Council on number of occasions which was whimsical, arbitrary and for political purpose. Hence the writ petitioner had challenged the Constitutional validity of the above provision of the Sixth Schedule to the Constitution. The writ petitioner challenged the paragraph 16(2) on the following four grounds :

1. That, power given to Governor under the paragraph 16(2) is unguided. Though in Art. 356[113] of the Constitution the President can invoke powers on receipt of the report from Governor, but in case of paragraph 16(2)[114] there is no such provision for getting a report before invoking the power by the Governor.

2. That, if the administration is taken over by the Governor by invoking powers under paragraph 16(2) there is no provision for delegating such legislative power to any elected representative of the people, such as State Assembly. While the President exercising powers under Art. 356 of the Constitution, the legislative function of State Assembly is performed by the Parliament.

3. That, by invoking paragraph 16(2) even judicial powers can be taken over by the Governor.

4. That, on dissolution of State Assembly, speaker continues to hold office but this is not so in case of Chairman of District Council.

The High Court dismissed the above stated contentions and held that paragraph 16(2) of the *Sixth Schedule* is constitutionally valid. Phukam, C.J. (Actg.) observed reasons in unequivocal terms, in respect to unguided power :

.....this can not be said to be unguided powers inasmuch as Governor has to act with aid and advice of the Council of Ministers and the Council of Ministers will tender advice only on the basis of some reports.[115]

in respect to Legislative function :

Even in respect of Legislative function during the period under which administration is taken over by the Governor by invoking powers under sub-paragraph (2) of paragraph 16 there is a check in making any law including regulation inasmuch as the Governor shall have the control before such law or regulation can be enforced. Even if such powers are exercised by any other authority under sub-paragraph (3) of paragraph 3 of the Sixth Schedule any law made by such authority has to be submitted to the Governor for his assent. This is a check for performing legislative function by any other authority.[116]

in respect to judicial powers :

.....under Paragraph 4 of the Sixth Schedule the District Council can only establish Courts within the limitations prescribed in the said paragraph. Once Courts are established, they perform judicial function independently under the supervision of the High Court under Art. 227 of the Constitution. That apart in paragraph 4 itself sufficient provisions have been made regarding the control of the Courts established by District Council by the High Court and the Supreme Court.[117]

in respect to the Chairman of District Council :

Regarding speaker there is specific Constitutional provision in Art. 94 and he continues to hold the office by virtue of this Constitutional provision. Therefore, his position can not be compared with the position of the Chairman of a District Council.[118]

Thus the Court held that the Governor have the power to take over the administration of the District Council, but he has to act with the aid and advice of the Council of Ministers. Therefore, his power is not unguided power.

(e) Right of Non-tribal to Carryon Business

The right of non-tribal to carryon business in tribal areas was examined in *Hari Chand Sardar* v. *Mizo District Council.*[119] The facts of the case were that, the appellant, a non-tribal, started trading at Aijal, Mizo District, in 1957 under a temporary licence issued by the Mizo District Council where he invested about Rs. 50,000. The temporary licence could be issued at a time for a year only and therefore he applied for and obtained its renewal from time to time up to May 31, 1960. He applied for a further renewal whereupon the Executive Committee of the District Council passed an order dated July 11, 1960 refusing any further renewal and directing him to remove his properties from the District by the end of July 1960 and imposed a fine for Rs. 500 in case he failed to comply with it.

In the High Court the appellant had raised the following two points : First, the order was malafide in the sense that it directed him to remove his properties from the District which imposed fine. Secondly, the order was based on an invalid provision of law. Section 3 of the *Lushai Hills District (Trading by non-tribals) Regulation, 2 of 1954* gives the District Council an arbitrary power of issuing or withholding licences to non-tribal and is repugnant to Arts. 14 and 19(1)(g) of the Constitution. The order infringed the fundamental right to carry on business amounted to an unreasonable restriction. The High Court struck down that part of the said order which directed him to remove his properties from the district and which imposed fine, but dismissed the rest of the petition, firstly, on the ground that of delay, and secondly on the ground that the said order was a valid order and was not discriminatory.[120]

In the Supreme Court, the respondent, Mizo District Council, contended that the order was made under Section 3 of the Regulation of 1953 which was passed for the avowed object set out in Para. 10 of the *Sixth Schedule* and reason for order was that the number of non-tribal traders had reached the maximum.

The majority of the Supreme Court, speaking through Shelat, J. (with Subba Rao, C.J.), reversed the High Court decision and struck down the Section 3 of the Regulation of 1953. The majority declared that Section 3 of the Regulation leaves to licencing authority an unrestricted power in the matter of granting or refusing licence or its renewal to non-tribal traders. The rule also does not lay down any standards on basis of which authority has to decide whether antecedents or character of application are such that application should be rejected. Even if *Sixth Schedule* can be said to contain policy to safeguard tribals from exploitation by non-tribals and regulation may be said to have been enacted in pursuance of such policy, that can not save Section 3 from vice of being unreasonable.[121]

Mr. Justice Bachawat, J., however, dissented from the decision of the majority. He viewed that the *Sixth Schedule* to the Constitution lays down the policy of administration of the tribal areas and paragraph 10(2)(d) of the Schedule specifically empowers the District Council to make regulations prescribing that a non-tribal resident of the District shall not carry on business unless a licence is issued by the District Council which is an integral part of this Schedule. This Paragraph is not violative of Arts. 14 and 19(1)(g), nor it so contended. Section 3 of the Regulation is in strict conformity with this paragraph. If Paragraph 10 of *Sixth Schedule* can not be regarded as violative of any provision in the Constitution, Section 3 of Regulation which is in strict conformity with Paragraph 10 can not also be regarded as violative of Arts. 14 and 19(1)(g).[122]

It may be respectfully submitted that the majority was in error as entire scheme of protection of tribals was ignored which were very adequately set down in dissenting opinion.

(f) Applicability of the Central and State Legislations

In *Regional Provident Fund Commissioner* v. *Shillong City Bus Syndicate*,[123] the question of the interrelationship between the Constitution and the *Sixth Schedule* was raised and applicability of Acts of Parliament to the Khasi Hills Autonomous District was challenged. The facts of the case were that a notice issued to the respondent, Shillong City Bus Syndicate, by the appellant, Regional Provident Fund Commissioner, under Section 7-A of the *Employees'*

Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the Act) an Act of Parliament, alleging non-payment of Employees' Provident Fund contribution for the period from January to September 1972. The notice was challenged by the Bus Syndicate on the Ground that the Act was not applicable to the Autonomous District of Khasi Hills within which the syndicate plied its buses.

There were three aspects of the matter came before the Supreme Court. The first aspect was that if the Presidential notification is require for the application of a Parliamentary Act or Act of the concerned State to the Autonomous District established under Sixth Schedule and if there is no any such notification, whether the Act is applicable? M. Hidayatulla C.J. has stated this problem as under :

> The Sixth Schedule is a very elaborate piece of legislation and it has undergone many changes since it was first enacted. This was done from time to time through Constitutional amendments, through Parliamentary legislation, through Presidential orders and Central Government notifications. The Constitutional amendments are political in nature, the Acts of Parliament effect reorganisation and the presidential orders either remove difficulties or are promulgated in the performance of duties laid on the President by the Sixth Schedule itself.[124]

Paragraph 12(1)(b) lays down that any Act of Parliament or of the Legislature of the State of Assam not covered by special provisions will be applied with such exceptions and modifications as the Governor may specify in the notification.

The second aspect of the problem was that whether an Act of Parliament or concerned State Legislature would apply *Proprio vigore* if there is no notification prohibiting its application. This problem was stated by B.L. Hansari, J., thus :

> In so far as the Acts or (sic) Parliament are concerned, the provisions in respect of tribal areas broadly speaking in that the Governor, in case of tribal areas in Assam, and the President in respect of the two other

> tribal areas, may notify that the Act shall not apply to an autonomous district or region, or shall apply subject to such exceptions or modifications as may be specified. A question arises whether an Act of Parliament would apply *proprio vigore* if there be no notification prohibiting its application.[125]

The third aspect of the problem dealt with the automatic applicability of the Act that whether an Act made by Parliament or concerned State Legislature will automatically apply to the District Council, unless the President or Governor thinks that they ought not to apply. Dr. Ambedkar, during the debates in the *Constituent Assembly* stated that :

> ....the other binding force is this that the laws made by Parliament and laws made by the Legislature of Assam will automatically apply to these Regional Councils and to the District Councils. Unless the Governor thinks that they ought not apply, in other words, the burden is upon the Governor to show why the law which is made by the Legislature of Assam or by Parliament, should not apply. Generally, the laws made by Parliament will also be applicable to these areas.[126]

The learned counsel for the respondents, contended that the Constitution intended to protect the autonomy of the administration, operation of law and administration of justice in the Autonomous District or Region suited to their environment to the exclusion of any law made by Parliament or the State Legislature unless the Governor or the President, as the case may be, by a public notification, makes the Act applicable with or without such modifications or exceptions in relation to the Autonomous District or Regions as may be specified in the notification. The Act was not made applicable by the President in relation to Khasi Hills Autonomous District by a public notification.[127] Against this line of argument, learned counsel for the appellant, contended that the *Sixth Schedule* have been incorporated to protect the autonomy of the tribals and have evolved a separate scheme for the administration of tribal areas. The District or Regional Councils have been constituted therein with a view to vest in them the legislative power on specified

subject allotted in relevant paragraphs of the Schedule with a power of taxation and setting up of administration and system of justice to maintain administration and welfare services in respect to the subjects enumerated in the respective paragraphs. Article 245 of the Constitution empowers Parliament and the Legislatures of the States, subject to the provisions of the Constitution, to make laws for the whole or any part of the territory of India. The Act was made to implement welfare schemes to provide medical facilities and health are to the workmen of the industries or establishments covered or notified under the Act. On Constitution of the Autonomous District or Regional Council, by operation of paragraph 12(1)(b) in relation to State of Assam and paragraph 12-A(b) in relation to Meghalaya, all Acts of Parliament shall apply to the Autonomous District, unless the Governor or President, as the case may be, by notification directs that the particular Act of Parliament shall not apply to an Autonomous District or Region or a part thereof in the respective State or shall apply to such district or region or part thereof subject to such exceptions or modifications as may be specified in that behalf in the notification. Autonomous District Council was constituted w.e.f. 27.6.1952, *Proprio vigore*, the Act stands applicable to the Khasi Hills Autonomous District. The notice issued by the appellant is valid.[128]

The court held that all Acts of Parliament or State Legislature which are not occupied by the provisions contained in paragraph 3 of the Sixth Schedule shall *Proprio vigore* become operative in the area of the Autonomous Regions or District and, therefore, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is applicable to the area of Khasi Autonomous District.

(g) Applicability of the Procedural Law

The question, whether framing of issues are necessary when the courts are governed by the *United Khasi and Janitia Autonomous District (Administration of Justice) Rules, 1953*, was raised in *U. Stoling Nonglang* v. *Ka Klin Lyngdoh*.[129] The High Court examined the extent of applicability of procedural law to the District Council Courts established under the *Sixth Schedule* to the Constitution. Mr. Justice K. Lahiri observed as under :

> Failure to frame issues by Court governed by United Khasi and Jaintia Autonomous District (Administration of Justice) Rules results in failure of justice. In such a case it could not be said that framing of issues is not necessary as such Courts are not governed by provisions of Civil P.C., but one guided by Principles of justice, equality and good conscience .... The formulation of the points or the issues have their origin from time immemorial and all Courts and Tribunals governed by the norms of justice or 'the known principles of law', settle issues and determine the disputes on the basis of the issues. It is essential in all adversary system of trial where parties are called upon to produce their evidence .... Issues help Courts to decide the precise questions required to be determined. When issues are framed a civil court can not go beyond them and formulate a new case for the parties. This rule is of universal application in all trials or proceedings where evidence need be recorded ..... All rules contained in procedural laws need be applied in trial of suits or cases by the courts governed by the Rules of the Administration of Justice, which are beneficial in natural and bear up the cause of justice. But, the principles of law, which are of universal application and those rules which accord with the principles of justice, equality and good conscience should be applicable in trials by the Courts concerned.[130]

Thus, the Court held that framing of issues are necessary even the Court is governed by the autonomous district council. All principles of law, which are of universal application should be applicable in trials by the Courts governed by the autonomous district councils.

(h) High Court Jurisdiction over District Council Courts

In *Pachhunga* v. *Zokhumi*[131] the jurisdiction of the High Court over District Council Courts was discussed. The High Court observed that under *Sixth Schedule* to the Constitution, the District Council courts are constituted for the trial of disputes where both parties are tribal and according to the *Assam High Court (Jurisdiction*

over District Council Courts) Order, 1954, the High Court exercise jurisdiction over the District Council Courts in the following manner :

1. An appeal against a final order or decision of the District Council Courts in a civil suit where the valuation of the suit is Rs. 1000 or more shall lie to the High Court.[132]

2. High Court may, on application or otherwise, call for the proceedings of any civil or criminal case decided by or pending in any court in the Autonomous District constituted under the provisions of sub-paragraphs (1) and (2) of paragraph 4 of the *Sixth Schedule* to the Constitution and pass such orders as it may deem fit.[133]

Thus, the High Court held that the Gauhati High Court exercise jurisdiction over any Autonomous District Council Court established under the *Sixth Schedule* to the Constitution.

(i) Territorial Jurisdiction of the District Council

In *District Council U.K.J. Hills v. K.D. Iyngdeh*,[134] the question was whether the jurisdiction of the District Council of the United Khasi-Jaintia Hills, extends to the area called Bara Bazar in village Mawkhar in Shillong or the said village was a part of Shillong Municipality. The High Court had held that the village Mawkhar which comprises Bara Bazar was a part of the Municipality of Shillong and the District Council had no jurisdiction, administrative or otherwise, over this area:

The Supreme Court reversed the decision of the High Court as the material on which the court relied was not justified and held that jurisdiction of the District Council extends to Bara Bazar in village Mawhar in Shillong. Mr. A.C. Gupta, J. (with K.K. Mathew, V.R. Krishna Iyer, JJ.) observed :

> We do not think that the material on which the High Court relied justifies the finding that village Mawkhar which includes Bara Bazar was part of the Shillong Municipality. The notification dated in 16th January, 1934 makes it clear beyond doubt that the Siem of Mylliem ceded the villages for the specified purpose of municipal administration only. It was also clear

> that though the provisions of the Assam Municipal Act, 1923 were made applicable to the ceded villages, the villages were never included within the territorial jurisdiction of the Shillong Municipality. The notification itself directed that these villages were to be deemed as a distinct municipality designed the Shillong (Administered Areas) Municipality which shows that they were not intended to be merged in the Municipality of Shillong..... There is also no evidence that these territories were subsequently merged in the Municipality of Shillong.....[135]

It may, however, be submitted that the finding of the High Court was more logical than the Supreme Court. The Administered area done away with and there was no room for another Municipality and no Municipality functioned as such in this area apart from Shillong Municipality. This area thus fell outside the jurisdiction of the District Council and within the Shillong Municipality.

(j) Jurisdiction of the District Council Court

The question of the jurisdiction of the Khasi Hills District Council Court has been placed before the High Court as a matter of reference in *I.C. Chakrabarty* v. *Khasi Hills District Council*.[136] The facts of the case were that in view of the judgment of the Supreme Court in *K.D. Iyngdeh*[137] case a confusion was arisen with regard to jurisdiction of the Court of Assistant Deputy Commissioner, Shillong municipality, over the place of Mawkhar. In this case the core question was whether the trial of cases in the area folling within Mawkhar including Barabazar in the town of Shillong are to be tried under the *Rules of Administration of Justice and Police in Autonomous District in Khasi-Jaintia Hills, 1937* or under the *Autonomous District (Administration of Justice) Rules, 1953* by the District Council Court.

The major argument in this case was that the Court of Asstt. to D.C., Shillong Municipality, got no jurisdiction as both the parties are Tribals and place Mawkhar is out side the Shillong Municipality according to the judgement of the Supreme Court in *K.D. Ingdeh* case.[138] Against this line of argument it was stated that this Supreme Court judgment only determined the administrative control of

District Council in those areas and hence in view of the provision of para. 20 of the Sixth Schedule, the Asstt. to D.C. of Shillong has got the jurisdiction in the matter of administration of justice in those areas even if both the parties are Tribals. In this connection para. 6 of the aforesaid judgment of the Supreme Court[139] was referred where it was admitted that the place Mawkhar have been ceded with the Shillong Municipal Authority, vide notification No. 44-1, dated 16th January 1934.

The majority of the High Court, speaking through Mr. K.D. Pathak C.J., held that the District Council Courts only will have jurisdiction for the administration of justice in Mawkhar including Barabazar area. In respect of matters pertaining to paragraphs enumerated in the provisio to para. 20(2), the District Council only will have full jurisdiction in the Mawkhar area. Thus paragraph 4 and 5 of the *Sixth Schedule* which are also mentioned in the proviso to para. 20(2) of the *Sixth Schedule* will not come within the exception engrafted to the aforesaid proviso so far Mawkhar including Barabazar area is concerned. Therefore, the District Council will have jurisdiction in all matters, except the Municipal administration, arising out of these areas.[140]

Mr. K. Lahiri, J. in his concurring judgment referred some cases[141] and observed that by virtue of the notification issued in 1934, Mawkhar was included within the Municipality of Shillong; although it continued to remain within the Municipality of Shillong as part and parcel thereof, yet the jurisdiction of the District Council extends over Mawkhar or southeast Mawkhar including Barabazar area. As such the District Council Courts have jurisdiction to try suits, the causes of action of which arise within the said area.[142]

The territorial jurisdiction of the District Council Court was questioned before a Special Bench of the High Court in *U. Owing Singh* v. *Ka Nosibon Jyrwa*.[143] In this case the question was whether the Siem of Myliem and his Durbar had jurisdiction to entertain and decide civil litigation between the tribals living in a territory which forms part of the United Khasi and Jaintia Hills, but is an area within the Labon, Municipality of Shillong.

Tracing the historical background, Mr. Sarjoo Prasad, C.J., has held that in respect of civil litigation arising within the Shillong

(Administrative Areas) Municipality, the Deputy Commissioner and his Assistants have exclusive jurisdiction to try the suits under the Rules of the Administration of Justice and Police in Khasi and Jaintia Hills, 1937, though territorially and for other limited purposes the area folls within the Tribal Areas styled as the United Khasi and Jaintia Hills District. This was concurred and supplemented by Mr. Ramlabhya J. with the reasoning that the law was so settled that the suits are being tried by the Deputy Commissioner and his Assistants under the Rules of 1937. On consideration of all the relevant legal position, the learned Chief Justice Mr. Sarjoo Prasad observed as follows :

> The provisions make it clear even in the Siemship are appertaining to the Shillong Municipal area, the District Council has no power to administer justice. It may be pointed out that the District Council has been constituted in respect to the United Khasi and Jaintia Hills District and the District Council has framed rules for the administration of justice in the autonomous district. Under these rules the village Court is composed of the Doloi, Sardar, Siem, Rynjah, Lyngdoh, etc. and these Courts are vested with powers to try suits of a civil nature.... The rules are dated the 8th December, 1953, and were promulgated with the assent of the Governor. These rules under the proviso to para 20 sub-para 2 of the Sixth Schedule have no application to the 'Administered Area' or the area of the State of Mylliem falling within the Shillong Municipality. Thus the Court of the Siem and his Durbar even if functioning under these rules had no jurisdiction to try civil cases in the 'Administered area'.[144]

A careful analysis of the legal position, as quoted above, reveals that the Siem and his Durbar have no jurisdiction to entertain suits of civil nature in the area of dispute even between the tribals. Because the power of the Siem after the Constitution were continued to the Siemship order or the Rules framed by the District Council Constituting the Siem as a village court. Thus the High Court was in right direction.

(k) Removal of Chief and Chairman

The question whether the Executive Committee can suspend and remove Dollai (headmen) if he has lost confidence of majority of electors in his *Elaka* was asked in *U.S. Suchiang* v. *J.A. Dist. Council.*[145] The facts of the case were that the petitioner, U. Span Suchiang, was the *Dolloi* of Raliang. The executive Committee of the Jowai Autonomous District Council decided for a referendum of the electors with regard to the petitioner's *Dolloiship* as the general allegations were brought against him. The petitioner challenged the order of the Executive Committee on the ground that the Executive Committee has no jurisdiction to order for a referendum without previously giving the petitioner a reasonable opportunity to show cause against such a step.

Relied on the earlier cases,[146] the High Court held that Executive Committee can suspend and remove *Dolloi* if he has lost confidence of majority of electors in his *Elaka.* To ascertain loss of confidence a referendum is permissible by custom or practice. When *Dolloi* concerned is informed of the proposal for such a step and he is himself present in the public meeting in which majority of the electors were in favour of referendum, there is no failure of any rules of natural justice.

In *U. Doley Singh* v. *District Council,*[147] the validity of the removal of Chief was examined. The facts of the case were that the petitioner U. Doley Singh was nominated as *Syiem* (Chief) of the Langrin Syiemship. Subsequently he was removed by the order of the Executive Committee of the Khasi Hills District Councils, approved by the District council, on the ground of "losing Confidence of majority of electors".[148] The petitioner challenged the aforesaid order where learned counsel submitted that the petitioner had not lost the confidence of the majority of the electors or of the people of *Elaka* and the impugned order was against to the Section 6(1) of the *United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959.* He further submitted that in the referendum 282 persons voted against the petitioner for his removal, but the total number of electors were 645. Hence, 282 votes did not represent the majority of the total votes numbering 645.

The High Court, following its earlier decisions,[149] held that the opinion of the Executive Committee is without jurisdiction and liable to be quashed. The expression 'losing of the confidence of the majority of the electors or of the people of the Elaka' in Section 6(1) means losing of the confidence of the majority of the total electors or the total people of the Elaka entitled to vote and does not mean losing confidence of the majority of the electors present in the meeting or Durbar called for the purpose. In the absence of Rules under Section 3, the electors of Langrin Syiemship are by customary law the adult males of the Langrin State and following that custom an electoral roll has been prepared by the Executive Committee itself including all the adult males of the Langrin State. The subjective opinion of the Executive Committee and the action in pursuance thereof for removal and suspension of a chief must be formed and taken on the basis of the provisions laid down in Section 6 itself. If the subjective opinion can not be said to have been formed on the basis of the provisions of Section 6, such a subjective opinion will be without jurisdiction and as such invalid and liable to be quashed in an application under Article 226 of the Constitution.[150] Where the Executive Committee had prepared a list of eligible voters and the number was 645, the petitioner, who was the *Syiem* can not be said to have lost the confidence of the majority of the total electors when 282 voters only had cast their votes expressing lack of confidence in the petitioner. So, the order passed by the Executive Committee, which had been approved by the District Council, removing the petitioner from the office of Syiem of Langrin Syiemship was not in conformity with Section 6(1) and can not be sustained.[151]

Luvezo Venuh v. *State of Nagaland*,[152] the question was whether in absence of the provisions of Rules and Regulations, the Chairman of the Town Committee can be removed by a no confidence motion by members of the Town Committee. The facts of the case were that following the resignation of Sri Nusucho, an elected member, the petitioner Sri Luvezo Venuh was appointed by the Governor of Nagaland as Chairman of the Phek Town Committee constituted under the *Assam Tribal Areas (Administration of Town Committees) Regulations, 1950.* Subsequently a no confidence motion was moved against the petitioner by members of the Town Committee.

In the High Court, the petitioner had raised the following points : (a) There is no provision in the Regulation either from removal of the Chairman or for a no-confidence motion by the members and the Town Committee being the creation of the Statute, all its functioning is governed by the Statute and in the absence of a specific provision of law, members have no right to move a no-confidence motion against the Chairman, (b) The petitioner having been appointed by the Governor to be the Chairman in exercise of the powers conferred upon him by a Regulation, the appointment of the petitioner as Chairman can not be revoked nor nullified by the members of the Committee by no-confidence motion, (c) The members of the Town Committee under the Regulation are not democratic bodies and as such they are not allowed to restort to democratic rights by mode of no-confidence motion.

The Court held that the removal of Chairman by no confidence motion is inherent right of members, though there is no such express provision. The Court observed as under :

> The members of the Town Committee elected under regulation are through democratic process and the conduct of the business of the members of the Town Committee are democratic in nature and therefore, it can not be said that the Town Committee is not a democratic institution. Consequently there can be no distinction whether the Chairman is elected or nominated, he is amenable to democratic process. Once it is held that the Constitution of the Town Committee is a democratic institution, and the Chairman and members are democratic bodies, the removal of the Chairman whether elected or appointed by a no-confidence motion is inherent. There can be no distinction between Chairman elected or Chairman appointed because once he is appointed or elected, he acts as a Chairman. The fact that the Chairman shall have casting vote in addition to his ordinary vote in case if a tie as visualised under Rule 53 of the Rules, would clearly so to show that once he is elected or appointed as Chairman, he is amenable to democratic process. In such a case, it

> would be incongruous to suggest that the members have no right to remove the Chairman by a vote of no-confidence merely because there is no provision for it. Further, merely because the discretionary power has been given to Governor to mould his decision for appointing the Chairman according to the exigency of circumstances, the democratic institution like Town Committee does not cease to be a democratic body. Therefore, no distinction is permissible between the Chairman appointed or elected.[153]

Regarding the question of absence of express provision or written law, the Court, following the Supreme Court ruling,[154] stated as under :

> From the reading of the Regulations and the Rules, the intention of the law makers are quite clear that it is intended for simple people and instead of more written law more discretionary power has been granted to Governor an the Deputy Commissioner. This type of law are made with an eye to simplicity. People in tribal area are less sophisticated and are not expected to make themselves aware of technicalities of complex law. It is with this background the simple law are made so that justice may not fail because of some technicalities. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In the tribal area it is considered necessary that discrition should have greater play than the technical rules. It is, therefore, necessary to leave the judge free so that he may mould his proceeding to suit the situation and may be able to apply the essential rules on which our administration of justice is based untrammelled by any technical Rule unless that Rule is essential to further the cause of justice.[155]

(l) Status of the Employees

The question whether village surveyor under Garo Hills District Council is a member of civil service under the State of Assam was asked in *Abdul Motaleb* v. *Garo Hills District Council.*[156]

The facts of the case were that the petitioner, Abdul Motaleb, was appointed temporarily as a Mandal (village surveyor) and was placed in charge of Lot. No. VIII-2 under the management and control of the District Council. Subsequently the petitioner was served a order terminating his appointment. Against this order the petitioner had challenged the validity thereof under Article 311 of the Constitution. In the High Court the important point in this case was decided that whether the petitioner could at all avail of the provisions of Article 311 of the Constitution.

The High Court held that a person appointed as a Mandal (village surveyor) under the Garo Hills District Council is not a member of the Civil Service of the State of Assam inasmuch as the State Government had nothing to do either with his appointment or dismissal or had any control over his duties and activities. Therefore, Article 311 of the Constitution has no application and he can not invoke the aid of Article 311. Though a District Council is a body corporate by virtue of para. 2(3) of the *Sixth Schedule* to the Constitution, it does not disclose a part from what is stated that it forms a part of the State machinery or that it could be considered to an adjunct of the same.[157] Hence, persons appointed by the District Council are not employees under the State.

It emerges from the foregoing discussion that two types of political processes have been recognised under the *Fifth* and *Sixth Schedules* to the Constitution of India for the governance and administration of tribals in India. The *Fifth Schedule* provides for the establishment of *Tribes Advisory Councils* and the *Sixth Schedule* provides for the establishment of *District Councils*. The *District Councils* are autonomous body established to implement the right of self-government.[158] The *District Council* is both an administrative as well as a legislative body. But its law making power is expressly limited by the provisions of the *Sixth Schedule*, because it is unlike the Parliament and the State Legislatures is not intended to be clothed with plenary power of legislation. The State Legislature has a sort of overall superintendence over the District Councils and that the executive authority of the State extends to the autonomous districts and regions. Consequently, the Governor exercises his functions with the aid and advice of the Council of Ministers under the *Sixth Schedule*. The District Council Courts are performing judicial functions under the supervision of the High

Court. In respect to the applicability of the Parliamentary law or law enacted by the State Legislature is concerned, all such laws which are not occupied by the provisions contained in paragraph 3 of the *Sixth Schedule* shall *proprio vigor* became operative in the tribal areas. All rules contained in procedural laws which are of universal application and accord with the principles of justice, equity and good conscience are applicable in the trial suits in the District Council Courts. The District Council is not, however, a part of the government machinery of the State. Hence, persons appointed by the District Council are not employees under the State Government.

NOTES AND REFERENCES

1. Amir Hasan, *Tribal Administration in India.* B.R. Publishing, Delhi (1988) at p. 21.

2. Ibid., at p. 25

3. Harsh R. Trivedi, *The Evaluation of Nationai Policy for Tribal Development.* Indian Institute of Public Administration, New Delhi (1982) at p. 11

4. Quoted in U.N. Dheber, *Report of the Scheduled Areas and Scheduled Tribes Commission (1961)* at p. 131

5. Ibid., at p. 28

6. It found expression in the *Kol Re Surrection of 1831-32* against forcible dispossession of their land, enhancement of rent and forced labour. Then there were several tribal revolts against the British, such as *Santal Revolt of 1885, Bastra Rising of 1911, Civil Disobedience by Kond Maliahs of Orissa, and Tana Bhagats in 1920.*

7. *The Regulation X of 1822; the Government of India Acts, 1833 and 1835;* the Bengal Regulation *XIII of 1833; the Regulation of 1855; the Indian Councils Act, 1861; the Garo Hills Act, 1869; the Government of India Act, 1870; the Scheduled Districts Act, 1874; the Assam Frontier Tracts Regulation, 1980; the Montagu Chelmsfords Reforms, 1918; the Government of India Acts, 1919 and 1935.*

8. For the history of the Constitutional developments of the tribal areas, *see,* M. Hidayatullah. *The Fifth and Sixth Schedules to the Constitution of India, (1979);* B.Shiva Rao. *The Framing of India's Constitution : A Study. (1968);* Reports on Tribal and excluded areas, in B. Shiva Rao, *the Framing of India's Constitution : Select Documents* (1967) vol. III pp. 681-782; S.K. Agnihotri, "District Councils Under

Sixth Schedule", 36 *JILI* 80-90(1994); N.C. Deb Varma," Autonomy for Tribal Areas: Historical Perspective and Emerging Trends", 2 *TUI* 7-28(1995); Arvind Kumar Sharma, "District Councils in the North-East" 3 *IJPA*, 783-93 (1979); S.K. Agnihotri, "Naga Hills District in the 19th Century" 2 *IJPA* 222-231 (1997); *District Council, U.K. and J.K. v. Miss Sitimon*, AIR 1972 SC 787. *Samatha v. State of A.P.* AIR (1997) 8 SCC 191.

9. *Reil* v. *Queen (1885)* 10 A.C. 674. According to Lord Halsbury, "peace and good government" conferred utmost discretion of enactment for the attainment of objects. The judicial pronouncement was approved by the Supreme Court in *Ram Kripal* v. *State of Bihar*, AIR 1970 SC 951. *See*, also Abdul Hamid, *A Chronicle of British Indian Legal History*. RBSA Publishers, Jaipur (1991) at p.175

10. *Queen v. Burach* (1878) 51 I.A. 178

11. S.K. Agnihotri, "District Councils under Sixth Schedule", op. cit. note 8 at p. 80

12. Ibid., at p. 81

13. *State of Nagaland* v. *Ratan Singh*, AIR 1957 SC 213; *See*, also M. Sridharacharyulu," Tribal Revolts and Evolution of Land Transfer Regulations : A critical Appraisal", 2 *NCLJ* 2-3 (1997).

14. For example, The *Backward Tracts* in Assam specified under the *G.I.Act, 1919, were :*

    (i) The Garo Hills District.

    (ii) The British portion of the Khasi and Shillong Municipality and Cantonment.

    (iii) The Mikir Hills (in Nowgong and Sibsagar Districts).

    (iv) The North Cachar Hills (in Cachar District)

    (v) The Naga Hills District

    (vi) The Lusai Hills District

    (vii) The Sadiya Frontier Tract

    (viii) The Balipara Frontier Tract

    (ix) The Lakhimpur Frontier Tract

It may be started here that these territories were designated as *Tribal Areas* for whose administration the *Sixth Schedule* to the Indian Constitution was enacted (except the Tripura Tribal Areas).

15. A detailed account of *Backward Tracts* is to be found in the Report of the *Indian Statutory Commission,* Vol. I (Survey) 1930 in Part-I, Chapter-8, Paras 75, 80, 86, 88, 84 and 99.

16. For the G.1. Act, 1935, *see, The Law Reports : The Public General Acts,* The Council of Law Reporting, London, 1935 at pp. 569-1001.

17. The *Excluded* and *Partially Excluded Areas* of Assam as Scheduled by the Order-in-Council under the *Goverment of India Act, 1935* were : (i) *Excluded Areas :* the North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts, the Naga Hills District, the Lushai Hills District, the North Cachar Hills Sub-Division of the Cachar District. (ii)*Partially Excluded Areas:* The Garo Hills District, the Mikir Hills (in the Nowgong and Sibsagar Districts), the British portion of the Khasi and Jaintia Hills District, other than Shillong Municipality and Cantonment. The *Excluded* and *Partially Excluded Areas* of Provinces other than Assam as Scheduled by the Order - in-Council under the *Government of India Act, 1935* were: (i) *Excluded Areas* : The Laccadive Islands (including Minicoy) and the Amindivi Islands (Madras); the Chittagong Hill Tacts (Bengal), Spiti and Lahaul in the Kangra District (Punjab) (ii) *Partially Excluded Areas :* (a) *Madras-* the East Godavori Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936. (b) Bombay-In the West Khandesh District, the Shahada, Nandurbar and Taloda Talukas, the Navapur Petha and the Akrami Mahal, and the villages belonging to the following Mehwassi Chiefs namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikki, and (6) the Parvi of Navalpur. The Satpura Hills reserved forest areas of the East Khandesh District. The Kalvan Taluk and Point Peth of the Nasik District. The Dahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District. The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahals District. (c) *Bengal-* the Darjeeling District, the Dewanganu, Sribardi, Nalitabori, Haluaghat, Durgapur and Kalmakanda police stations of the Mymensing Distirct. (d) *United Provinces* - the Janusar Bawar Pargana of the Dehra Dun District, the portion of the Mirzapur District south of the Kaimur Range. (e) *Bihar*-the Chota Nagpur Division, the Santhal Parganas District. (f) *Central Provinces and Behar-* In the

Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewadha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Pategaon Zamindaries in the Garchiroli Tahsil. The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Parara), Almod and Sonpur jagirs of the Chhindwara District, and the Portion of the Pachmarhi jagir in the Chhindwara District. The Mandla District. The Pendra, Kenda, Matin, Lapha, Uprara, Chhuri and Korba Zamindaries of the Bilaspur District. The Anudhi, Koracha, Panaburas and Ambagarh Chauki Zamindaries of the Drug District. The Baihar Tahsil of the Balaghat District. The Melghat Taluk of the Amraoti Distict. The Bhainsehi Tahsil of the Betul District. (g) *Orissa*- the District of Angul, the District of Sambalpur [the areas transferred from the Central provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936], the Ganjam Agency Tracts (the areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras).

18. Statement by the Cabinet Mission to India and His Excellency the Viceroy, 16 May 1946. *see*, Sir Maurice Gwyer and A. Appadorai (collected), *Speaches and Documents on the Indian Constitutions. 1921-47*, Vol. II. Oxford University Press, London. (1957) pp 577-584.

19. Initially three sub-committees were appointed by the *Advisory Committee*. As a result of political partition of India the *North-West Frontier Province and Baluchistan Sub-Committee* become a concern of the Dominion of Pakistan.

20. The sub-committee on Assam was formed with Gopinath Bordoloi (chairman) and J.J. M. Nichols Roy, Rup Nath Brahma, A.V. Thakkar (as members).

21. The sub-committee on other than Assam was formed with A.V. Thakkar (Chairman); and D.N. Samanta, Thakur Phul Bhan Shah, Raj Krushna Bose, Jaipal Singh, P.C. Ghose (as members).

22. For the Report of the Committee and Sub-Committees on tribal and excluded areas, *see*, B. Shiva Rao, *The Framing of India's Constitution : Select Documents*, 1967; pp. 681-782.

23. Ibid., Para. 5 at pp. 691-692.

24. Ibid., Para. 9 at pp. 694-695.

25. Ibid., Para. 15 at p. 701.

26. Ibid., Para. 8 at pp. 693-694.
27. Ibid., Para. 6 at pp. 692-693.
28. Summary of Recommendations of the Sub-Committee on Assam. op. cit. note 22 at pp. 692-693.
29. *Interim Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee* op. cit. note 22, at pp. 733-770.
30. Supra note 22, at p. 734.
31. Ibid., *see* also, B. Shiva Rao. *The Framing of Indian Constitution : A Study*. N.M. Tripathi, Bombay (1968) at p. 577.
32. Supra note 22, at p. 759.
33. B. Shiva Rao. *Select Document*, op. cit. note 22, at p. 774.
34. Ibid., Para. 2 at pp. 771-72.
35. Ibid., p. 771.
36. Ibid., p. 772.
37. Ibid., p. 773.
38. For the text of the Draft Constitution, *see*, B. Shiva Rao. *Framing of India's Constitution : Select Document*. Vol. III. op. cit.
39. For the Constituent Assembly Debates on *Fifth Schedule*, *see*, Constituent Assembly Debates, Vol. IX, pp. 965-1001.
40. Ibid., at p. 976.
41. Ibid., at p. 977.
42. Ibid., at p. 981.
43. Ibid., at p. 997.
44. Ibid.
45. Ibid., pp. 1014-5. For the Constituent Assembly Debates on *Sixth Schedule*, *see*, Ibid., pp. 1001-1082.
46. Ibid., at p. 1014.
47. Ibid., at p. 1008.
48. Ibid., at p. 1009.
49. Ibid., at p. 1015.

50. Ibid., at p. 1022.

51. Ibid., at p. 1021.

52. Ibid., at p. 1023.

53. Ibid., at p. 1025.

54. Initially the *Sixth Schedule* was only applicable in the tribal areas in the State of Assam and after reorganisation of North Eastern Areas, its scope was extended to the State of Meghalaya through *the North-Eastern Areas (Reorganisation) Act, 1971* (81 of 1971), (w.e.f. 21.1.1972).

55. The provisions of the *Sixth Schedule* were extended to the tribal areas in the State of Tripura in 1984. *Ins.* by *the Constitution (Forty-nine Amendment) Act, 1984*. (w.e.f. 1.4.1985).

56. *Subs.* for "Union Territory" by *the State of Mizoram Act, 1986* (w.e.f. 20.2.1987).

57. *see*, the Scheduled Areas (Part A States) Order, 1950 (C.0.9), the Scheduled Areas (Part B States) Order, 1950 (C.0.26), the Scheduled Areas (Himachal Pradesh) Order, 1975 (C.0.102) and the Scheduled Areas (States of Bihar, Gujrat, Madhya Pradesh and Orissa) Order, 1977 (C.0.109).

58. *see*, the Madras Scheduled Areas (Cesser) Order, 1950 (C.0.30) and the Andhra Scheduled Areas (Cesser) Order, 1955 (C.0.50).

59. *Sixth Schedule*, Paragraph 1.

60. Ibid., Paragraph 2.

61. Ibid., Sub-Paragraph 1 of Paragraph 3.

62. Ibid., Sub-Paragraph 3 of Paragraph 3.

63. Ibid., Sub-Paragraphs 12A, 12AA and 12B.

64. Ibid., Paragraph 10.

65. Ibid., Sub-Paragraph 1 of Paragraph 6.

66. Ibid., Sub-Paragraphs 1 and 2 of Paragraph 4.

67. Ibid., Sub-Paragraph 4 of Paragraph 4.

68. Ibid., Sub-Paragraph 3 of Paragraph 5.

69. Ibid., Sub-Paragraph 1 of Paragraph 5.

70. Ibid., Sub-Paragraph 1 of Paragraph 4.

71. Ibid., Sub-Paragraph 2 of Paragraph 4.

72. Ibid., Paragraph 8.

73. Ibid., Paragraph 9.

74. Ibid., Paragraph 7.

75. Ibid., Paragraph 15.

76. Ibid., Paragraph 16, For the Commentaries on the *Sixth Schedule*, *see*, V.R. Manohar and W.W. Chitaley. *The AIR Manual*, AIR Ltd. Nagpur, Vol. 13, 1989, pp. 801-821; Durga Das Basu. *Commentary on the Constitution of India* : *Vol. P.*, Art. 369-6th Sch., Kamal Law House, Calcutta. 7th ed. (1996) pp. 219-247; M.P. Jain, *Indian Constitutional Law* (4th ed.) N.M. Tripati, Bombay (1984) pp. 236-38, D.K. Singh (ed.). *V.N. Sukla's the Constitution of India*. Eastern Book Co., Lucknow (1996).

77. AIR 1961 SC 276. Wanchoo J. delivered in judgement on behalf of Sinha, C.J., Kapur, Gajendragadkar, JJ. and himself.

78. Ibid., at p. 279.

79. Ibid., at p. 281.

80. Ibid , at p. 284.

81. AIR 1972 SC 787.

82. Quoted in Ibid., at p. 788.

83. Ibid.

84. Ibid.

85. AIR 1968 Assam and Nagaland 43.

86. Ibid., at pp. 790-791.

87. Ibid., at p. 792.

88. 1986 SCC (Tax) 768.

89. Ibid., at Para 2.

90. Ibid.

91. Ibid., at pp. 778-79. The Court followed the Principle evolved in *K.T. Moopil Nair* v. *State of Kerala*, (1961) 3 SCR 77:AIR 1961 SC 552.

92. AIR 1966 SC 1220.

93. Quoted in Ibid., at p. 1223.

94. Quoted in Ibid.,

95. Quoted in Ibid.,

96. AIR 1966 Assam and Nagaland 1.

97. Ibid., at p. 1236.

98. M. Hidayatullah. *The Fifth and Sixth Schedules to the Constitution of India.* (1979) at p. 83.

99. Rajendra Nayak, "Powers of the Governor under the Sixth Schedule to the Indian Constitution", 9 *JILI,* 1967 pp. 236-246.

100. AIR 1972 SC 223.

101. AIR 1966 Assam and Nagaland 29.

102. *Ram Kripal* v. *State of Bihar,* AIR 1970 SC 951, *J.K. Gas Plant Manufacturing Co. Ltd.* v. *U. Jormanik Siem,* AIR 1961 SC 276.

103. AIR 1972 SC at p. 226.

104. Ibid.

105. Ibid. at para. 12.

106. AIR 1974 Gau. 20.

107. Ibid., at p. 24.

108. Ibid., at pp. 22-25.

109. Ibid.

110. Ibid.

111. Ibid.

112. AIR 1995 Gau. 15.

113. Art. 356(1) : "If the President, on receipt of the report from the Governor of a State or otherwise, is satisfied that a situation has arisen.....".

114. paragraph 16(3) : "If at any time the Governor is satisfied that a situation has arisen.....".

115. AIR 1995 Gau. 15 at p. 19.

116. Ibid.

117. Ibid., at p. 20.

118. Ibid.

119. AIR 1967 SC 829.

120. Ibid., at p. 830.

121. Ibid., at p. 834.

122. Ibid., at p. 835.

123. (1996)8 SCC 741.

124. Quoted Ibid., at p. 747. *see* also M. Hidayatulla. *The Fifth and Sixth Schedule*. op. cit. at p. 53.

125. Quoted in *supra note* 123, *see* also, B.L. Hansari, *Sixth Schedule to the Constitution of India : A Study*. Ashok Publishing House, Gauhati (1983) at p. 45.

126. *Constituent Assembly Debates*. Vol. IX at p. 1026.

127. *Supra note* 123 at p. 744.

128. Ibid., at p. 743.

129. AIR 1982 Gau. 82.

130. Ibid., pp. 84-85.

131. AIR 1990 Gau. 87.

132. Assam High Court (Jurisdiction over District Council Courts) Order, 1954. Paragraph 3.

133. Ibid., Paragraph 6.

134. AIR 1975 SC 1022.

135. Ibid., at p. 1025.

136. AIR 1984 Gau 92.

137. *District Council U.K.J. Hills* v. *K.D. Iyngdeh*, AIR 1957 SC 1022.

138. Ibid.

139. Ibid.

140. AIR 1984 Gau 92 at pp. 102-105. The majority relied on Ibid. Case.

141. *U. Owing Singh* v. *K.A. Nosibal*, AIR 1956 Assam 129, *Hordeo Das Jagannath* v. *State of Assam*, AIR 1970 SC 724, *District Council U.K.J. Hills* v. *K.D. Ingdeh*, AIR 1975 SC 1022.

142. *Supra note* 136.

143. AIR 1956 Assam 129.

144. Ibid.

145. AIR 1971 Assam and Nagaland 109.

146. *U. Nodri Majau* v. *U. Kendromani Rai*, Civil Rule No. 407 of 1961 (Assam) (unreported decision), *U. Doley Singh* v. *Executive Member* (1962) ILR 14 Assam 139.

147. AIR 1976 Gau. 76.

148. Advocate General had referred to an unreported decision of the Gauhati High Court : (1961) Civil R. No. 407 of 1961 D/-18-5-1962 (Assam).

149. *Edwingson Barch* v. *Henry Cotton*, AIR 1965 Assam and Nagaland 49, *U.S. Suchiang* v. *J.A. Dist. Council*, AIR 1971 Assam and Nagaland 109.

150. AIR 1976 Gau. 76 (80-81).

151. Ibid., pp. 79-80. The Court followed the principle evolved in earlier cases : AIR 1965 Assam and Nagaland 49; AIR 1971 Assam and Nagland 109.

152. AIR 1994 Gau. 81.

153. Ibid., at pp. 85-86.

154. *State of Nagaland* v. *Ratan Singh*, AIR 1967 SC 212; 1967 Cri LJ 265.

155. AIR 1994 Gau. at p. 88.

156. AIR 1961 Assam 69.

157. Applied the principle laid down in *Mohammad Ahmad v. Chairman Improvement Trust*, AIR 1958 All 358.

158. *Edwingson v. State of Assam*, AIR 1966 SC 1220.

CHAPTER - 5

Old and New Political Process in Realization of the Rights of Indigenous Peoples (Regarded as Tribals) in Tripura

The preceding Chapters demonstrated that at the international level the term "Indigenous Peoples" has been well recognised and this term can be attributed to the "Scheduled Tribes" in India. It also demonstrated that certain rights of Indigenous Peoples have received recognition within the human rights framework at international level. These rights are related to either land and resources or culture, language and education or development. But the right of *internal* self-determination in the form of autonomy or self-government is the possible formprocess for the realisation of the rights of Indigenous Peoples. At the national level, two types of political processes have been recognised under the *Constitution* for the realisation of rights of tribals in India, one is under the *Fifth Schedule* and another is under the *Sixth Schedule*. The *Sixth Schedule* is applicable to four States of North-East India, viz., Assam, Meghalaya, Tripura and Mizoram, and the *Fifth Schedule* is applicable to rest of India. The *Sixth Schedule* provides for establishment of *Autonomous District Councils* in tribal areas to implement the right of self-government. The *Autonomous District Councils* are both administrative as well as legislative body. In Tripura, due to the movement launched by the tribal people for the protection of their rights, the State Legislative Assembly have passed an Act, *the Tripura Tribal Areas Autonomous District Council Act, 1979* under which the *Tripura Tribal Areas Autonomous District Council* was established. Subsequently, in 1984, the special provisions of the *Sixth Schedule* to the Constitution were

extended to the tribal areas in the State of Tripura. Since then a new political process has been started in the State of Tripura by establishing *Tripura Tribal Areas Autonomous District Council* for the realisation of the rights of Indigenous Peoples (regarded as tribals). For the purpose of finding out role and impact of this new political process in realisatior. of the rights of Indigenous Peoples (regarded as tribals) in Tripura, it is necessary to examine in detail both old and new political processes of Tripura for protection of tribals. This chapter is primarily devoted to this procedural aspect.

Before we examine the old and new political processes in realisation of the rights of Indigenous Peoples (regarded as tribals) in Tripura, it is essential to stress on the genesis of Tripura and its physical feature. Therefore, we propose to throw light on the genesis of Tripura and its physical feature.

I. GENESIS OF TRIPURA

(A) Origin of the Name Tripura

Tripura was one of the most ancient kingdoms of the North-East India, claiming its origin from the days of *Mahabharata*, when king Yajati's exiled son Drujhya laid its foundation. The origin of the name 'Tripura' however, cannot be conclusively traced back to any recorded source of history. According to Hunter, the name Tripura was probably given to the land in honour of the temple of Udaipur, once considered "as the second *Tirtha*, or sacred shrine, in this part of Bengal; it was dedicated either to Tripuradhana, the 'sun-god' or to Tripureshwari, the mistress of the three worlds ... The appellation was given by the Aryan-speaking immigrants, or by the adjacent Aryan settlers of lower Bengal".[1] But this does not seem to be correct, for the temple is believed to have been built around A.D. 1501 whereas the name of the land was known as such long before 1501. Apart from this view there is another opinion offered by Kailash Chandra Singha. According to him Tripura has been coined from two Tripuri words - *tui* and *pra*. In Tripuri language *tri* means water and *pra* means near. It is believed that originally the land was known as *Tripra*, meaning a land adjoining the waters. It is a fact that in days of yore the boundaries of Tripura extended up to the Bay of Bengal when its rulers held sway from the Garo Hills to Arakan. It might be that the name appropriately derived its origin from its nearness to water. This

Tripra has subsequently been corrupted into *Tipra* and from *Tipra* to Tripura. Even today the hill people pronounce the word as *Tipra* and not Tripura.[2] Of all the views on the origin of the name Tripura, the last one offered by Kailash Chandra Singha appears to be quite probable and appropriate.

(B) Pre-British History of Tripura

The Tripura *Rajas* are said to have assumed the title *Manikya* from the time of king Ratan Pha.[3] The title of Manikya was conferred on him by the Sultan of Gaur in 1280 A.D. Since then, this title has been being used by the decendents till today. Dhanya Manikya (1490 to 1515 A.D.), one of the greatest personalities among the *Rajas* of Tripura, was a great annexationist. He conquered Arakan, subdued the Kachari king, and seized Roshnabad from the ruler of Bengal. One of his successors, Vijoy Manikya (1529 to 1564 A.D.) also had a powerful army and he conquered adjoining Sylhet, Khasi, Jaintia and Chittagong districts.[4] For some time there were constant wars between the Tripura Kings and the Muslim rulers of Gaur, but Tripura maintained its independence. But in 17th century, the Moghuls knocked at its door and cast their greedy-eyes on it. In 1620 A.D. Nawab Fateh Jung of Bengal under orders of Emperor Jehangir, invaded Tripura and subdued its king, Jasadhar Manikya. As he and his successors refused to pay tributes, Shah Shuja, in 1658, invaded Tripura again and imposed a tribute on the State. The tribute, however, was not paid regularly, and, so in 1722 during the time of Dharma Manikya-II, the Moghuls deprived him of a large portion of the plains territory and stationed Moghul Zemindars therein. It is during Dharma Manikya's II reign that the great Ahom King Rudra Singha Sen envoys to the Tripura court to secure cooperation in building up a confederation of eastern rulers to resist the Moghuls, and these envoys left a graphic account of Tripura kingdom of that time (1724 A.D.)[5]

(C) History of Tripura During British Period

Soon thereafter, the Moghul power also declined and the British acquired Diwani of Bengal in 1765, they sent Mr. Verelst from Chittagong to occupy Tripura, claiming succession to it from the Moghuls. They set up Krishna Manikya as the new king, and fixed the yearly revenue to be paid by him at rupees one lakh.[6]

Mr. Ralph Leak was then appointed as the first Resident of Tripura, and Tripura was reduced to the state of obedience to the British. But the ruler of Tripura was not disturbed in respect of his independent rule in the hilly areas. The revenue mentioned above related only to the plains area known as "Chakla Rosanabad" in respect of which he was treated as a Zemindar. After Krishna Manikya's death there were constant palace intrigues and family disputes as to succession to the throne. Ultimately in 1809 the British recognised Durga Manikya as the *Raja*[7]. Since then, every new *Raja* had to pay a *Nezarana*[8] to the British administration at the time of his investiture. Among the subsequent *Rajas*, Birchandra Manikya (1862-1896) ushered in modern period.[9] He recognised his administration on modern lines, codified the civil and criminal laws, abolished slavery and *Suttee* and patronised scholars and artists. It was during his reign that land tenure legislations governing the relationships between landlords and tenants were first enacted. During the reign of his grandson Birendra Kishore Manikya (1909-1923) large tracts of land were converted into tea-gardens. The next ruler, Maharaja Bir Bikram Kishore Manikya (1923-47) carried forward the process of modernisation even more extensively than before. He decentralised and democratised his rule to a great extent. He set up various councils and committees to advise him in administration. He reserved about a half of the entire State territory to safeguard the interests of five major tribes, namely, Tripuris, Noatias, Jamatias, Reangs and Halams. In this reserve, transfer of land to a non-tribal without prior permission of Government was prohibited.

(D) Post-British History of Tripura

At the time of the death of Bir Bikram Kishore Manikya, his son Kiriti Bikram Kishore Manikya was very young, and his mother Kanchanprova Debi ruled as the Regent. The Regent Maharani signed the instrument of accession on August 13, 1947. On September 9, 1949, the Regent Maharani signed the agreement of merger of Tripura[10] with the Indian Union, and the administration was taken over by the Chief Commissioner on October 15, 1949. In 1950, Tripura was made a Part C State under the Constitution of India. By the *States Reorganisation Act, 1956*, it was made a Union Territory (w.e.f. 1.9.1956). Finally Tripura was lifted to the category of States by the *North Eastern Areas (Reorganisation) Act, 1971* (w.e.f. 21.1.1972).[11]

II. PHYSICAL FEATURES OF TRIPURA

(A) Location and General Boundaries

Tripura laying approximately between 22°56' and 24°32' North latitudes and between 91°0' and 92°20' East longitudes.[12] People from the rest of India go to Tripura mostly by air from Calcutta, Gauhati and Silchar. The railway line from Karimganj side does not extend up to Agartala, its capital, but ends at Kumarghat, a town of the North Tripura district, 62 kms. south of the Cachar-Tripura border. A road, of course, connects Agartala with Karimganj of Assam. Tripura is bounded on the North, West, South and South-East by the international boundary of Bangladesh erestwhile East Pakistan districts of Sylhet, Comilla, Noakhali, Chittagong and Chittagong Hill tracts respectively. In the East, it has a common boundary with Cachar and Mizo districts of Assam and Mizoram (India).

(B) Area

The total area of the State is 10,477 sq. km. About 60% of this area is covered by low hills one of which attains a height over 2,000 feet. There are six parallel ranges, each higher than the preceeding one and they connect the state with the Mizo Hills. Plain land covers about 40% of the total area of the State.

(C) Population

The total population of Tripura is 27,44,827 and the density is 271.5 per sq. km. The population of Tripura has been increased as a result of the influx of displaced persons from the adjoining districts of East Pakistan, now Bangladesh after partition. This influx greatly increased since January, 1951. The Scheduled Tribes population forms 30.9% of the total population.[13] There are 19 recognised tribes in Tripura, namely, Tripuri, Reang, Jamatia, Chakma, Halam, Mog, Noatia, Kuki, Garo, Munda, Lushai, Orang, Santhal, Uchai, Khasi, Chaimal, Bhil, Bhutia and Lepcha.[14] The growth of population (*see* Table 5.1) changed in demographic composition of the State.

Table 5.1 : Variation of population in Tripura

Year	*Population*	*Decadal*	*Decadal variation in percentage*
1901	1,73,325	-	-
1911	2,29,613	+ 56,288	+ 32.48
1921	3,04,437	+74,824	+ 32.59
1931	3,82,450	+ 78,013	+ 25.63
1941	5,93,010	+ 1,30,560	+ 34.14
1951	6,39,029	+ 1,26,019	+ 24.56
1961	11,42,005	+ 5,02,976	+ 78.71
1971	15,56,342	+ 4,14,337	+ 36.28
1981	20,60,189	+ 5,03,847	+ 32.39
1991	27,44,827	+ 6,84,638	+ 33.23

The tribals who accounted for 50.09% of population in 1941, have been reduced to 30.95% of the 27.44 lakhs population of the State in 1991. A quick glance reveals the fast changing demographic scenario of the State (*see* Table 5.2).

Table 5.2 : Composition of Tribal population in Tripura

Year	*Population of State*	*Tribal population of State*	*Percentage of tribal population*
1931	3,82,450	1,92,249	50.26
1941	5,13,010	2,56,991	50.09
1951	6,45,707	2,37,953	36.85
1961	11,42,005	3,60,070	31.53
1971	15,56,342	4,50,544	28.95
1981	20,53,058	5,83,920	28.44
1991	27,57,205	8,53,345	30.95

Among the total 19 tribes in the State, Tripuries account for 60% of the total population. The Tripuries and Reangs are believed to be the earliest inhabitants of the State, others are supposed to be the later migrants. The Garos, Khasis, Mundas, Orangs and

Santhals came to Tripura only one or two generations ago as plantation labours. Numerically, the Tripuries are the largest tribe belonging to the Bodo group of Indo-Mongoloid origin. The Bodos who are spread over the whole of the Brahmaputra valley and North Bengal form the main basis of the present day population of the State. The Reangs, the second largest tribe, is considered to be of Kuki origin. They originally came from Burma and entered Tripura through Chittagong hill tracts.

(D) Administrative Districts

Tripura State is divided into three districts, namely, North Tripura District, South Tripura District and West Tripura District, for the purpose of administration. These three Districts are divided into ten Sub-divisions. There are three sub-divisions, namely, Kamalpur, Kailasahar, Dharmanagar in the North Tripura District, four in South Tripura District, namely, Amarpur, Belonia, Sabroom, Udaipur, and three in West Tripura District, namely, Khowai, Sadar and Sonamura.

(E) Climate

The climate of the State is generally hot and humid. The average maximum temperature is 35°C in May-June and the average minimum 10.5°C in December-January. The average rainfall is in the neighbourhood of 230 cm per annum. The monsoon starts generally in April and continues up to September. The principal seasons of the State are similar to those of the neighbouring States. Summer starts in March and continues up to May, and is followed by the rainy season extending over about three-four months (May and August). The pleasant season has a comparatively small lease of life lasting only for about two months (September and October), then follows winter which continues up to February.[15]

(F) Economy

Agriculture is the mainstay of Tripura's economy. About 68% of the people depend upon agriculture, 44% being real cultivators and 24% agricultural labourers. Total cultivation area is about 2,45,000 hectares which is about 23% of the total State area. Cultivation of rice alone claims about 90% of the cultivated area and other crops, namely, jute, mesta, oil-seeds, pulses, potato,

sugarcane and cotton the rest. *Jhum* cultivation is practised by the tribal population in the hilly areas but the total area involved (about 25,000 hectares) is very much less than that in the permanent cultivation (2,20,000 hectares). Area under *Jhum* cultivation thus forms only about 10% of the total cultivated area. Tea plantation is a major item of agriculture in Tripura, there being 56 units involving 5,400 hectares under tea, but holding another 8,000 hectares for ancillary purposes. Forests and minerals are important natural resources. More than 67% of the total area of the State is covered by forests, which yield good quality sal, bamboo and cane. Of the minerals, petroleum is known to exist in abundant quantities and oil and Natural Gas Commission of India is carrying an extensive drilling operations. Limestone and Kaolin are also known to occur but need systematic exploration. Large-scale industry, except tea, does not exist in Tripura. The almost isolated geographical location of the State and lack of power and communication facilities have proved to be the major handicap for the development of industries in the State. Some small scale industries, however, have been in existence in the territory since the days of the *Rajas* of Tripura.[16] These industries are relating to bamboo and cane works, brass and bellmetal articles, pottery, silk rearing and cotton weaving.

(G) Religion and Language

There are only four predominant communities in Tripura professing different religious beliefs - Hindus, Muslims, Buddhists and Christians. Most of the tribal people have their own tribal customs and beliefs, but in the broader sense of religion they are believed to be followers of Hinduism.[17] Only the Lushai, Kuki and some people of the Garo community profess Christianity. The Mog and Chakma communities as well as a few people of other tribes profess Buddhism. *Bara Puja* is the most important religious festival of Halams. The two other important *Pujas* celebrated by the tribals and the non-tribals are *Kharchi Puja* and *Ker Puja*. For historical reasons Bengali has been the most important and dominant language of the State. About 80% of people use Bengali language in their day-to-day activities. The next to Bengali language comes Tripuri language which is mostly prevalent in Sadar, Khowai, Amarpur and Kailshahar sub-divisions. The dialect of Tripuri language is known as *Kak-Barak*. Halam is the mother tongue of

Halam community and Rankhal is their dialect. The Mog community whose number is not large speaks the language of Burma, and some other tribes like Munda, Bhil (whose number is insignificant) who do not seem to have any dialect of their own speak their neighbour's dialect for their daily business.[18]

(H) Culture

Tripura has a mixed population of tribals and non-tribals. Of the former, the Tripuries, the Reangs, the Jamatias, the Chakmas, the Halams, the Noatias and the Mogs are important. The non-tribal population consists mostly of Bengalees. But what is unique in Tripura is that here one finds elements of culture of different sets of people each unique in its own way mingled together, and in the process, a composite culture that is coming is embracing the different standards of faith.[19] The initial contributors to this composite culture are the early inhabitants of the land, the tribals, whose origin may be traced to Indo-Mongoloid blood and the people of the surrounding areas, the Bengalees.

It emerges from the foregoing discussion that the Tripura is one of the youngest States of India. Prior to Indian Independence, it was a native princely State. After independence, it merged into the Indian Union in 1949 and after passing through several stages, ultimately it attained the full status of Statehood in 1972. However, the tribal population of Tripura have been greatly reduced during 1941-1981.

Now we propose to discuss both the old and new political processes for protection of tribals and realisation of their rights in Tripura.

III. OLD POLITICAL PROCESSES IN REALIZATION OF RIGHTS OF INDIGENOUS PEOPLES (REGARDED AS TRIBALS) IN TRIPURA

As mentioned earlier, since the time of establishment of the *Tripura Tribal Areas Autonomous District Council* a new political process has been started in the State of Tripura for protection of tribals and realisation of their rights. No study of the new political process can be complete without reference to the old political processes in pre-independence and post-independence Tripura.

Therefore, before we examine the new political process for tribals in Tripura, we propose to throw light on the old political processes during the *Rajas* regime and post-independence era.

(A) During Rajas Regime

(i) Birchandra Manikya (1862-1986)

(a) Administrative reforms

Among the *Rajas* of Tripura, Birchandra Manikya became renowned for modernisation of his administration. He divided the territory into divisions for speedier and better administration. The Udaipur division was created with Sonamura sub-divisional headquarters to strengthen administration in Northern parts of the State. The Kailasahar division had been created earlier. Another sub-division was created with Belonia headquarter. During the closing phase of Bir Chandra's rule additional administrative units were set up at Dharmanagar and Khowai. In this way a hierarchical system of governance began to take place with sub-division from division and district to the State capital. Experienced officers familiar with the British Indian pattern of administration were put in charge of the divisions. There were reasons to believe that position of political agent in the State played a positively contributory role in adoption of these measures which brought the State administration closer to the administration prevailing at that time in British India. This seems to had been welcomed by the people too.[20] The *Raja* also appointed a Council of Ministers in 1883. This Council administered both the hill territory and the Zemindary of Roshnabad.

(b) Judicial reforms

Besides the administrative reforms, *Raja* Birchandra Manikya abolished the supreme judicial power hitherto enjoyed by the *Raja* himself and in place of it created a supreme judicial body known as *Khas Appeal Adalat*, by appointing two judges. He had also introduced a system of law examination in the State to help local aspirants to join the legal profession. The legal system was codified and some new departments like those of excise, stamps and registration were created and laws were framed thereunder. The reforms introduced by the Birchandra Manikya

functioned very efficiently and earned commendation of even the British Indian authorities recorded in their administrative reports.[21]

Right from the distant past the tribal people of Tripura had their own system of self-administration in the form of Village Councils and Regional Councils. These self administering units discharged both executives and judicial functions, and justice was meted out in terms of their time-honoured customary laws. These laws were different among the different tribes. Each tribe had its own Village or higher Councils under the local headmen and above the local Councils were the chiefs representing the entire community. These chiefs discharged both administrative and judicial functions and had appellate authority in respect of judicial matters. Community-wise they had separate designations, such as, Hada Akra, Kachak, Chaudhury, Sardar, Kerpeng, etc. Over these chiefs was the *Pahadi Adalat* or the Hill Court of Appeal were authority of the *Raja* was supreme. In 1879, seven years after constitution of *Khas Appeal Adalat* (Royal Court of Appeal), this Hill Court of Appeal was abolished by the *Raja* through a proclamation.[22]

(c) Bengali as State language

In 1873-74 Bir Chandra Manikya introduced Bengali as the State language of Tripura through a Royal proclamation. Under the title : *Rules for Codification of the Royal Acts of Independent Tripura*, it was ordered that with a view of making the civil and criminal Courts fall in line with the need of the times and doing lasting good to all sections of the people, rules and regulations as framed from time to time shall be codified in Bengali and written in Bengali script. To reinforce this order, another proclamation was issued the same year to the effect that all petitions and submissions to government officers shall be written in Chaste Bengali in a neat and legible manner so that officers found no difficulty in reading and dealing with them.[23]

(ii) Radha Kishore Manikya (1896-1909)

Radha Kishore Manikya also tried to take the State forward through introduction of reforms in different fields of administration.

(a) Administrative Reforms

(1) Executive Council

In 1898 Radha Kishore set up an Executive Council consisting of six members drawn from the top echelon of administration and with himself as its Chairman. It was formed to ensure speedy and efficient conduct of governance in both the State and Zemindari. This Committee was primarily an advisory body. Subjects on the agenda were discussed by the Council members and opinions were given in the meetings, but operative decisions were taken by the *Raja* (Chairman). In case of the *Raja's* absence, meetings were chaired by Gopi Krishna Thakur, one of the six members and designated as representative of Chairman, and in such meetings decisions were to be taken on the basis of majority opinion. In case of tie, the matter was to be referred to the *Raja* for final decision. Three subjects were kept outside the purview of the Council : (a) matters related to the royal aristocracy, (b) settlement of all kinds of land within the State and Zemindari, and (c) promulgation, amendment and repeal of any law. In the rules of business of the Council it was also provided that minutes of each meeting were to be recorded in the proceedings book and put up to the *Raja* (Chairman) for his signature. The minutes were to be signed also by the Representatives of Chairman and other members of the Council.[24]

(2) Legislative Council

Radha Kishore Manikya also introduced a legislative Council with the object of amending existing laws of the land and codifying the time-honoured customary laws and conventions. But regulations, memos and circulars pertaining to the forest, revenue and other department had required to be issued by the *Raja's Khas Durbar*. These departments were remained outside the purview of the Council and were to be discussed in the Executive Council. The *Raja* was President of the Council. The Council consisted of not more than eight and not less than six members. An important provision, however, was included that of non-official lawyers practising in the "Comilla Judge Court" as additional members. No law could be enacted without the consent of the *Raja* and all decisions were to be taken by the *Raja* after hearing opinion of the members. All the members of the Council were nominated by the *Raja*.[25]

(3) Amatya Sabha

In 1908 an *Amatya Sabha* (Advisory Council) was also formed by the *Raja*. It consisted of five members including the *Yuvaraj*. A Chief Officer was appointed in place of the minister.

(b) Judicial Reforms

Radha Kishore introduced significant changes in the functioning of the *Khas Appeal Adalat* that was set up by his father. The *Adalat* was headed by any dignitary belonging directly to the royal household. Except inflicting of capital punishment that acquired royal assent, all other matters could be disposed of by the *Adalat* in an independent manner through majority opinion of the judges. Radha Kishore also effected separation of the judiciary from the executive. A munsiff magistrate was appointed to perform judicial functions in the Sadar sub-division, while a separate collector would look after revenue and other matters. The munsiff was given powers to try both civil and criminal cases. Temporary magistrates were also appointed at Agartala to try and dispose of small criminal cases under the chairmanship of Sadar magistrate. That deserves special mention is Radha Kishore's decision that the entire judicial structure of the State through reconstruction of Courts at different levels. Courts were divided only in two categories : (1) *Khas Appeal Adalat,* and (2) Lower Courts. Lower Courts were again of three categories : (a) Courts under lst class magistrates, (b) Courts under second class magistrates, and (c) Courts under third class magistrates. The natures and functions of the magistrates were also defined. The intermediate Courts like Appellate Courts, Sessions Courts, Subjudge's Courts were abolished. This was done to make judicial system simple and people may get justice at lesser cost. The Act stated as follow :

> The people of the State are generally poor and simple-minded not inclined to rush for litigation. It has however been observed that as a consequence of existing provisions permitting series of appeals in a particular suit, they are put to loss and harassment because of prolonged litigation ... At present there are well-educated judges in the lower courts. In consideration of this situation it is felt that appropriate provisions should be made to reduce the number of

appellate courts and ensure better disposal of appealed cases in order that the people may get justice at lesser cost within a short period of time.[26]

(iii) Birendra Kishore Manikya (1909-23)

Birendra Kishore Manikya had early experience in administrative matters during the rule of his father. He had already been put in charge of the revenue and political departments in 1905-two of the most important departments of government. He introduced changes in his administration - both in executive and judicial branches, and followed the path of his illustrous father to develop agriculture, industry, education, roads etc., besides construction of temples and buildings. Since relations with the British Indian Government were already on an even keel, Tripura enjoyed a period of peace, an essential precondition for all-round development.[27]

(iv) Bir Bikram Kishore Manikya (1923-47)

Since the days of Bir Chandra Manikya, attempts had been made to break new grounds by way of introducing innovative practices in Tripura's administration, Bir Bikram Kishore Manikya realised that unless delegation of powers was made to the lower stratum of administration, efficiency would diminish with consequence retardation in leadership and development. He accordingly adopted some measures to constitute councils, committees and village organisations. Some of the important measures were : (1) formation of *Mantrana Sabha* (Advisory Council, August 1927), (2) formation of the *Mantriparishad* (Executive Council, May 1929), (3) formation of the *Tripura Kshatriya Samaj* (July 1929), (4) Proclamation to provide a new Constitution including a Legislative Assembly (April 1939), and (5) passing of the *Gramya Mandali Act* (Village Unions) to provide local bodies in rural areas.

There is hardly anything new about formation of the Advisory Council and the Executive Council or the Legislative Assembly and for that matter about judicial reforms. These were tried and had been in operation since the period of Bir Chandra Manikya. Radha Kishore and Birendra Kishore also pursued this trend of formation and tried to make the administrative process

systematic. But these activities were mostly of a probing nature having very little inherent substance in them, because the ultimate say rested with the Ruler. And secondly, members in the Councils and Committees were all nominated holding office at the pleasure of the Ruler. Bir Bikram also did not go beyond this basic pattern laid down by his predecessors. The three measures initiated entirely by him were the *Tripura Kshatriya Samaj*, provision of a new Constitution and setting up of the *Gramya Mandalis* (Village Unions) in rural areas to involve the local people in the management of their daily business of life.

(a) Tripura Kshatriya Samaj

This *Samaj* was meant exclusively for the Tripuri community. It sought to recognise the collective life and society of the Tripuries. At the village levels were the *Mandal Samities* each consisting of five to nine members. At the beginning the number of village unions were 25, within a month such number was raised to 36 and after three years to 50. Over the 50 unions, a provision was made for a central assembly consisting of 12 members and also an advisory committee consists of three members. The nine members on each *Mandal Samiti* were all nominated by the *Raja*. He could also appoint 10 volunteers for each *Samiti*, and their main task was to assist the *Samiti* in the maintenance of social order at the village level. The central assembly was invested with powers to resolve little problems and disputes within the community.[28]

On the face of it, it may appear that setting up of the *Tripura Kshatriya Samaj* was a step forward towards decentralisation and devolution of authority which could have provided the Tripuri community, the largest and most influential among the tribal communities, with a forum at the village level to resolve their local issues and disputes and thereby improve their social conditions. One pertinent point to be remembered in this context, however, is that from the distance past the tribal communities had been having their distinctive self-rule outside the place of governmental authority under each successive ruler. Each community had its own chiefs. The Tripuris too had their own *Choudhuries* and *Sardars* who used to settle local disputes in terms of their customary laws, tradition and usage and through whom the *Rajas* maintained indirect contact with their tribal subjects in the interior areas. The

Tripura Kshatriya Samaj created an organised hierarchy within the Tripuri community that could by pass the traditional authority of the local chiefs and seek to control the tribal masses through the *Samities* and their volunteers, all nominated and appointed by the *Raja*. It may, therefore, be said that this was a political move behind the cover of social reforms.

(b) State Constitution

During the last decade of his rule, Bir Bikram increasingly came to realise that the political situation in the country at large for freedom from the foreign yoke would not leave his small native State unaffected. Already several organisations with distinct political covertones, some overt and some covert, started functioning in different parts of the State, for instance, *Anushilan Samiti, Jugantra, Bhratri Sangha, Matri Sangha, Tripura Rajya Gana parishad, Tripura Janamangal Samity, Dharmanagar Hitasadhini Sabha*, etc. The demand for representative popular government that already came into being in all provinces of British India in July 1973 began to gain momentum in the State. In April 1939 Bir Bikram announced that he would give a new comprehensive Constitution to the people for bringing about all-round development of the State and making government a participatory endeavour involving both the ruler and the ruled alike. The Constitution was proclaimed as an Act of the Government in July 1941. The salient features of the Constitution were :

1. The Tripura Government was symbolised by the Maharaja of Tripura.

2. There was a Privy Council (*Raj Sabha*) consisting of not less than five and not more than fifteen members, all the members were to be appointed by the *Raja*.

3. There was a *Mantri Parishad* (Council of Ministers) consisting of a Chief Minister and four other ministers.

4. The Chief Minister was made responsible to the *Raja*. Portfolios of the ministers was also to be allocated by the *Raja*.

5. A *Byabasthapak Sabha (Legislative Assembly)* was set up to carry one legislative functions. It consisted of 55 members

out of which 9 members were to be elected. Others were to be nominated by the *Raja* to represent different interest groups. The tenure of the Assembly was fixed as three years. The president of the Assembly was to be appointed by the *Raja*. The Assembly did not have the right to discuss matters related to the royal family, Tripuras' relations with the British authorities, military affairs, the privy purse, etc.

6. In place of the *Khas Adalat* a High Court was set up.

7. The *Raja* was given power to suspend working of the Constitution, if considered necessary, in the entire State or any part thereof.[29]

It may be relevant to mention that the legislative part of the Constitution never came into force due to World War II.

(c) Gramya Mandalis (Village Unions)

In 1938 Bir Bikram made an attempt to introduce self-governing village councils to be called *Gramya mandalis*. Instead of the one council for one village he grouped a number of villages over which a nominated body of elderly members was to be set up and proposed to give it certain powers of administration including administration of justice in respect of certain offences. In this direction he issued a proclamation for setting up *Gramya Mandalis* in three groups of villages, which were empowered to try petty civil and criminal cases and perform development work in the sphere of education, medical and law and order. Powers to realise certain tax and cesses to meet the expenses for the above work was also conferred on them. In the same year the *Raja* again issued another proclamation for extending the scheme of *Gramya Mandali* to all the villages of the State and to that end directed the minister to appoint Sardar, Pradhan and members and to take all necessary steps. Subsequently in 1940, the *Gramya Mandali Act* was enacted by the *Maharaja*. From available records, however, it appears that the *Gramya Mandalies* could not actually came into being during the life time of Bir Bikram Manikya. On paper it was a commendable scheme, and had a strong foundation of local self-government within the State, but practically the programme received set-back and only 4 *Gramya Mandalies* were started.[30] However, King Bir Bikram Kishore Manikya died on May 17, 1947 and in August 15, 1947 India attained independence. The

administrative reforms adopted by *Raja* could not be implemented due to World War II.

(B) Post-Independence Era

(i) Regent Maharani (1947-1949)

King Bir Bikram Kishore Manikya had passed away on May 17, 1947, only three months before the British finally quit India, at that time his son Kiriti Bikram Kishore Manikya was minor of age. His mother, Maharani Kanchanprava Devi, had to act as Regent. A Council of Regency was formed with the Regent as President that began to carry one administration. The Maharani as Regent proclaimed that administrative reforms proposed by the late *Maharaja* could not be implemented due to the World War II. She, however, assured that she would see that democratic administrative set-up be formed by including the representatives of the villages. During this period, the proposal of constituting one public service commission was also approved by the Regent.[31] Subsequently, the Regent Maharani dissolved the Regency Council on the advice of the Government of India on the 12th January, 1948 and took over all powers to herself and appointed the Chief Minister to aid her in the administration of the State. Again on March 21, 1948 the post of Chief Minister was transformed to the post of *Dewan* of the State. The *Dewan* was assisted by one Adviser and few secretaries in day-to-day administration.[32]

Although in principle, the decision regarding the accession of the State of Tripura to the Union of India was taken, the State was not formally merged till 1949 and the Regency Council, continued for a little period of two years. The Regent Maharani, Kanchanprava Devi, in her proclamation on November 11, 1947 stating the last desire of the late Maharaja, said that, "the accession of this State to the Indian Union was decided by the late ruler after due consideration and full consultation with all sections of the people."[33] Ultimately, the Regent's rule came to an end when Agreement of Merger of Tripura with the Indian Union was signed by the Maharani, the Regent, on September 9, 1949.[34]

(ii) Part-C State

In the wake of merger, Tripura became a centrally administered territory, as a Part-C State of India under the Chief

Commissioner of Tripura on October 15, 1949. Part-C States were administered by the President of India under the provisions of Article 242 of the Constitution. It appears from Sardar Patel's massage issued on the occasion that the Central rule in Tripura was introduced because of special needs arising out of partition and Tripura's geographical location on the border of the country. The massage read thus :

> The State of Tripura, with its isolated situation, yet occupying a position of strategic importance on the Eastern Border of India, has an ancient history and rich culture. The partition of the country has, however, brought in its train for this State a prost of problems which, in the present State of its development, it was impossible for it to solve unaided. The Government of India and Her Highness the Maharani Regent, acting on behalf of the minor Ruler, have come to the conclusion that in the interests of the State and its people and of the country as a whole, it was essential that the Centre should make itself responsible for the administration of the State and the well-being of its people. Tripura thus becomes from today a centrally administered area.[35]

In 1949, the Central Government issued the *Tripura Administration Order*, 1949, according to which all laws in force prior to that order were to continue in force. This order saved the laws enacted by the Ex-Rulers. Again under Section 3(1) of the *Part-C States (Laws) Act, 1950* (subsequently known as the *Union Territories Laws Act, 1950*), the Acts and Ordinances specified in the Schedule to the *Merged States (Laws) Act, 1949* were extended to Tripura. This Act also conferred power on the Central Government to extend to Tripura any enactment in force in any State. In pursuance of this Act, a number of Acts in force in other States were extended in Tripura. Thus, after merger of Tripura all Acts of Parliament became applicable to Tripura *proprio vigore*.[36]

(iii) Union territory

Meanwhile a demand was grounding in the country for reorganisation of States on linguistic basis. The Government of India set up the States Reorganisation Commission to examine

the question of States reorganisation from the overall national perspective in general and welfare of the people in particular. As a result of reorganisation of States effected on November 1, 1956, Tripura became a Union Territory with an Advisory Committee at the Centre to advice the Union Government in regard to :

(a) General questions of policy relating to the Administration of subjects in the State field,

(b) all legislative proposals pertaining to the territory, and

(c) matters relating to the annual financial statements of the territory.[37]

The Union territory was to be administered by the President of India through an Administrator appointed by the President. The post of Chief Commissioner was converted into the post of Administrator of Tripura. As a measure of democratisation of the administration in Tripura, Territorial Council was formed in 1959 and village *Panchayats* were established in 1961.

(a) Tripura Territorial Council

Tripura lost its existence as a Part-C State and became a Union Territory as a result of reorganisation of States and the regime of the Council of Advisors was also replaced by a statutory body of *Tripura Territorial Council* (hereinafter Council) on August 15, 1957 under an Act of the Parliament of India.[38] The Council was a representative body consisting of 30 elected and 2 nominated members. The Council carried out its administration through five major Departments, viz., General Administration, Education, Health Services, Engineering and Animal Husbandry. The subjects dealt with by the *Tripura Territorial Council* in terms of the Act were transferred to the Council. The *Tripura Territorial Council* had a long list of functions to execute, the main items of which were : (i) construction and repair of roads, (ii) establishment and management of primary and secondary schools, (iii) public health and sanitation, (iv) preservation and improvement of livestock and veterinary services, (v) control of *panchayts*, etc. The legislative authority of the territory, however, vested in the Union Parliament, and all central Acts and laws were general applicable to the territory. The Council was desolved in 1963 when *Union Territories*

Act, 1963 was passed.[39] The Act provided for setting up of a legislative Assembly and Council of Ministers in Tripura.

(b) Village Panchayats

In accordance with all India policy of associating village *Panchayats* with the work of Community Development, the *Uttar Pradesh Panchayat Raj Act, 1947* was extended to Tripura and Tripura *Panchayat Raj* Rules were framed thereunder in 1961. The Act provides for Constitution of *Gaon Panchayats* only at the village level without any provision for Block level bodies with composition similar to that of *Panchayat Samitis* or *Zilla Parishads.*

The programme of establishment of *Panchayats* was started in Tripura during the Third Plan period in those Community Development Blocks, which have seen community process of work for the last six or eight years. But Panchayat elections could be conducted only in four community Development Blocks during 1962-63 due to national emergency arising out of Chinese aggression. The temporary ban imposed on the conduct of elections was lifted by the middle of 1963-64 and *Gaon Panchayats* were established in four more Community Development Blocks during the remaining period of the year. Two more Blocks were brought under the fold of *Panchayats* during 1964-65. Thus, during the Third Plan period three hundred and six *Gaon Panchayats* and eighty-one *Naya Panchayats* were started in eleven community Development Blocks. The *Goan Panchayats* served useful purpose in organising village volunteer forces at the time of national emergency in nine Development Blocks. *Panchayat* elections in six Development Blocks were completed during the period from April, 1966 to April, 1967 establishing one hundred and forty-two *Gaon Panchayats* and fifty-three *Naya Panchayats,* thus bringing the total number of *Goan Panchayats* and *Naya Panchayats* to four hundred and forty-eight and one hundred and thirty-four, respectively spread over seventeen Development Blocks and covering the entire territory. One Panchayat Raj Training Institute was also opened in the year 1968 for imparting training to Panchayat Secretaries and non-official members associated to the *Panchayats.*[40]

(iv) Attainment of Statehood

Although Tripura was declared as one of the Union Territories and many steps were taken to democratise the

administration, the demand for full Statehood continued without any let-up. All the political parties clamoured for it, because in the Union Territory set-up, the Council of Ministers was very much dependent on the pleasure of the Chief Commissioner. Moreover, this demand for Statehood was not confined to Tripura alone, it was growing in other Union Territories, for instance, Manipur and Himachal Pradesh, too. Agitations were going on in the then NEFA and Mizoram also for greater autonomy and separation from Assam. The cumulative effect of all this was that in December 1971 the *North-Eastern Areas (Reorganisation) Act* was passed. In terms of this Act, Tripura became a full-fledged State of the Union with effect from January 21, 1972. The number of Assembly seats were increased from 30 to 60 and the first Assembly election was held in March, 1972. it was indeed a long journey of political process in Tripura from Monarchy to statehood and full-fledged democracy under the Constitution of the Indian Republic.

(C) Specific Protections for Realisation of the Rights of Indigenous Peoples (Regarded as Tribals) through Old Political Processes in Tripura and Reasons

(i) Specific protection for tribals during Rajas regime

With due recognition of all the mainly qualities of the *Maharajas*, it can be noticed that only few tangible measures were adopted to improve living conditions of the hill people and to help them in deriving benefits of socio-economic reforms. They remained in their forestclad hilly abodes and continued to eke out their livelihood in outlandish ways. *Maharaja* Bir Bikram Kishore Manikya, however, took an important step to protect tribal interest. In 1931 and again in 1943, he reserved certain areas of land for plough cultivation by certain hill-tribes, namely, Tripuries, Reangs, Jamatiya, Noatiya and Halams, so that, by resorting to the improved methods of cultivation, they could improve their economic conditions. In 1931, the area so reserved was 285 sq. km. and in 1943, the area reserved was 5050 sq. km. These two areas together formed 5,335 sq. km. which is about half of the total area of the State territory (10,477 sq. km.). The revenue-free and other permanently settled estates located within the boundaries of these reserved lands were excluded from the purview of the reservation. Within the reserved area, no transfer, without the previous permission of the Government, to any person not

belonging to any one of the above-named five tribes was valid. It was provided that, if necessary, the Government itself would, in the absence of purchaser belonging to the above tribes, purchase it by paying price.[41] But this measure did not succeeded and lands passed to non-tribals on a extensive scale.

(ii) Condition of tribals after Independence

After independence, condition of tribals moved in a different line that the population pattern of Tripura changed at an inconceivable, rapid rate. Unprecedented influx of displaced persons from East Bengal altered the balance in such a manner that the tribals were reduced to a minority of 29% of the total population of the State. The Census Report of 1971 States about the migration as follows :

> It appears that in 1961 out of 11,42,005 persons, 5,87,754 persons were migrants which, in terms of percentage, is 51.47, but the said percentage in 1971 is 47.91... The rate of migration between 1951-61 has been higher than the said rate between 1961-71. Actually the people migrated to Tripura mainly during the years immediately after partition of Bengal in 1947.[42]

Migration rate before partition, i.e., during the decade 1941-51 was found to have been very much lower, namely, about 4.50%. So the great influx started after independence. This unprecedented pressure of migration, the tribals were gradually rushed into interior. They either sold their lands or simply abandoned them after frequent disputes or clashes. As a result tribal people began to loose their lands on account of transfers, even though such transfers of lands were not in accordance with law.

Following the accession of the State to the Union of India in 1949, as mentioned earlier, Tripura became Part-C State of India which was included in the North-Eastern Indian region, and an administrator was appointed by the President of India as the Chief Commissioner of Tripura. After the accession of the State the Central Government appointed the Dhebar Commission in 1950 to examine the problems of the Scheduled Caste and Scheduled Tribe population of the country. *Shri N.M. Patnaik*, the then Chief

Commissioner of Tripura submitted a note to the Commission stating that a specified area should be declared as reserved for the tribal people under Fifth Schedule to the Constitution of India. The Dhebar Commission, however, recommended *inter alia* that Tribal Development Blocks could be set up as an experimental measure in tribal compact areas and if this measures failed to bring about any material improvement among the tribal people, measures under *Fifth Schedule* could be given a trial.[43]

Besides Dheber Commission, an Administrative Reforms Commission was also set up under the Chairmanship of *Sri K. Hanumanthaiah*. The Commission after examining the above issues suggested that some compact tribal areas in the States, like, Manipur and Tripura could be specified and Tribal Councils be established there along with delegation of well defined administrative powers.[44] *Shri Jawaharlal Nehru*, the then Prime Minister of India, also convened a national conference in 1952 to discuss problems affecting the Scheduled Castes and Scheduled Tribes population of the country. In that conference *Sri Dasarath Deb*, the then Member of Parliament, proposed that a definite area should be declared as reserved for the tribal people of Tripura. He said, "Some area or areas of Tripura shall have to be set aside for the tribals alone and no other person belonging to non-tribal communities should be allowed into this are and take note that this is not a new idea at all."[45] Subsequently, the *Tribal Rajya Gana Mukti Parishad* in a memorandum submitted to the Prime Minister of India on September 10, 1955, stated that :

> .... the scramble for land in Tripura has reached such a point that it is no longer possible for the tribal *Jhumias* to find new lands for Jhuming nor are they in a position to retain their old Jhuming lands traditionally used for cultivation. So Government *Khas Lands* around tribal habitations should be declared as reserved areas for rehabilitation for the tribal communities.[46]

(iii) Legislative measures to protect tribal interest after Independence

In 1960, the Union Parliament passed, *the Tripura Land Revenue and Land Reforms Act, 1960* (hereinafter referred to as TLR

& LR Act, 1960).[47] During regime of the Ex-Rulers, there were 5 written legislations on land and 5 identifiable land tenures. These laws and land-tenures continued in force for some years even after independence. But this legislation repeals all the old written laws[48] and provides various measures of land reform. The basic objective of the TLR & LR Act, 1960 is to bring the tiller of the soil into direct contact with the State clothe him with permanent, heritable and transferable rights over land cultivated by him, subject, of course, to reasonable restrictions in the interest of Scheduled Tribes.[49] The Act, however, provided some positive measures[50] for the protection of tribals : (a) restriction on transfer of land by tribals, (b) restriction on transfer of land by non-tribals in Scheduled villages.

(a) Restriction on transfer of land by tribals

A special feature of the TLR & LR Act, 1960 is that the provisions for the protection of the interests of the tribals. The unrestricted transfer of tribals' land to non-tribals was sought to be controlled by enactment of Section 187 of the Act. Under Section 187 of the Act, no transfer of land by a tribal to a non-tribal would be valid unless it is made with the previous permission of the collector in writing. Sub-section 1 of the Section 187 reads as under:

187(1) : No transfer of land by a person who is a member of the Scheduled Tribes shall be valid unless - (a) the transfer is to another member of the Scheduled Tribes; or (b) where the transfer is to a person who is not a member of any such tribe, it is made with the previous permission of the collector in writing in the manner prescribed; or (c) the transfer is by way of mortgage to a co-operative society or to a bank or to the central or the State Government.

In 1974 Section 147 of the Act was amended and added Sub-sections (3), (4) and (5) to laying more rigorous conditions on transfer of tribal land holdings. The amendment incorporated an important provisions relating to restoration of tribal lands. According to the new provision if, nevertheless, such transfer in contravention of the above provision takes place at any time after January 1969, the authorised officer may after giving an opportunity of being heard, eject the transferee and restore the transferred land to the tribal transferor. The inserted Sub-section (3) of the Section 187 runs as follows :

3(a) If a transfer of land belonging to a person who is a member of the Scheduled Tribes is made on or after the first January, 1969 in contravention of the provisions of sub-section (1), any revenue officer, appointed specially for this purpose by the State Government by notification in the Official Gazette, may, of his own motion or on an application made in that behalf, and after giving the transferee an opportunity of being heard, by an order in writing eject the transferee or any person claiming under him from such land or part thereof.

(b) When the revenue officer has passed any order under clause (a) he shall restore the transferred land or part thereof to the transferer or his successor-in-interest.[51]

Sub-section (4) of the Section 187 prohibits the courts from passing the decrees or orders for the sale of tribal land and Sub-section (5) of the section 187 prescribes that when a tribal land needs to be sold in execution of a certificate for recovery or arrear of land revenue, it should be sold preferably to another tribal.[52]

(b) Restriction on transfer of land by non-tribals in Scheduled Villages

Transfer restricted under Section 187 related to those from tribals to non-tribals. But in certain villages which are predominantly inhabited by tribals, there are found to be non-tribals also living and holding lands. If these non-tribals have free right to transfer their lands to anybody, naturally, the non-tribals would continue to stay and even to proliferate, because a big holding may be broken up into a large number of smaller plots and sold away to new non-tribals who may choose to settle there. To protect tribal interest from such type of transfer, a third amendment of the TLR & LR Act, 1960 was made in 1975 and a new Chapter - IXA was incorporated by inserting Section 107(A) to 107(E) to the Act of 1960.[53]

Under Chapter-IXA of the TLR & LR Act, 1960, transfer of land in certain villages and tehsils by non-tribals has been so regulated as to benefit the tribals.[54] Schedule II to the present Act enumerates the villages and tehsils in which these special provisions would apply. According to these new provisions if a non-tribal in any of these villages or tehsils wants to transfer his

land, he is to serve notice, through the competent authority on all co-sharers and also on tribals owing adjacent land, of his intention to sell his land.[55] If they want to purchase the land, the co-sharers shall have the priority. If they both fail to purchase, the competent authority may select a landless tribal who resides in the village or tehsil and is willing to purchase the land. On depositing the value of the land, the competent authority shall issue a certificate to the selected intending purchaser declaring him to be the transferee of the land which shall thereupon vest in him.[56] If the selected tribal purchaser is not in a position to pay the price immediately, the State Government may purchase it and subsequently transfer the same to him on payment of price. If none of these possibilities come about, then the intending non-tribal transferor may transfer the land to any other person.[57]

It is, however, contended that the above Land Reforms Act, 1960, was detrimental to the tribal interest. Because the Section 187 of the said Act, certain conditions have been laid down, which made the transfer of tribal land very difficult and more complicated. The Act provided that a land transfer away from the tribals, needed the Collector's permission.[58] As a result of this provision it has been reported that a good number of tribals of Dashda of Kanchanpur area were uprooted from their own land and had sought shelter elsewhere. Secondly, the 1974 amendment went further, requiring the restoration of tribal land alienated on or after lst January, 1969 in contravention of the Act.[59] Thus, the second amendment, i.e., the 1974 amendment, in fact, virtually legalised transfers that had taken place before lst January 1969. Not only that the progress of restoration of land had been distinctly very slow.

It emerges from the foregoing discussion that under the old political processes two types of specific protections had been adopted for the protection of tribals and realisation of their rights, one was the declaration of reserved areas of land for tribals, and another was the imposition of restriction on transfer of tribal lands.

IV. NEW POLITICAL PROCESS IN REALISATION OF THE RIGHTS OF INDIGENOUS PEOPLES (REGARDED AS TRIBALS) IN TRIPURA

(A) Tripura Tribal Areas Autonomous District Council under the State Legislation of Tripura

The legal protection provided under Section 187 of the TLR & LR Act, 1960 and its subsequent amendment of 1974 did not register any significant improvement in the tribal situation in Tripura. There was also a persistent demand of the tribals for autonomy. The Government of Tripura, therefore, decided to introduce the third measure for the protection of the interest of tribals by setting up an Autonomous Council for the predominantly tribal areas of the State and hereby protect the social, economic and cultural interests of the tribal population. The Tripura Legislative Assembly, on March 23, 1979, passed the *Tripura Tribal Areas Autonomous District Council Act, 1979*[60], "for the establishment of an Autonomous District Council for tribal areas in the State of Tripura and for the purpose of Self-Government by the tribals in such areas."[61]

The Act declared predominantly tribal compact areas as *tribal areas*,[62] which included 47 tehsils and 164 villages from all three districts of Tripura. The tribal areas covered 7,132.56 sq. kms. which was the 68.07% of the total State's area. 6,26,173 people were resided in the tribal areas which was the 30.50% of the total population of the State. Among them 4,46,049 people were tribal which was 76.38% of the total population of the tribal area (1981 census). The Act was modelled on the pattern of the *Sixth Schedule* to the Constitution of India. With the enactment of the Act, a new political process began in the State of Tripura for the realisation of rights of Indigenous Peoples (regarded as Tribals) in the State. Hence, it required detailed examination.

(i) Scheme of the Act

(a) The Act and District Council

The *Tripura Tribal Areas Autonomous District Council Act, 1979* (hereinafter referred to as TTAADC Act, 1979) contained provisions for the Self-Government of tribals in the tribal areas of Tripura. The tribal areas (mentioned in the First Schedule

appended to the Act) were declared to constitute an *Autonomous District*[63] and a District Council was established for exercising powers and functions.[64] The District Council was incorporated body having a perpetual succession[65] and consisted of 28 members being elected on the basis of adult suffrage from territorial constituencies.[66] Out of which three fourths of the members (i.e., 21) should belong to Schedule Tribes. The term of elected members of the District Council was five years.[67] The Chairman and Vice-Chairman would be chosen by the District Council amongst its members.[68]

In the District Council an Executive Committee was formed consisting seven Executive Members including Chairman. The Chairman of the District Council was designated to be the head of the Executive Committee and he was authorised to select six persons amongst the members of the District Council as members of the Executive Committee.[69] The executive functions of the District Council was vested in the Executive Committee.[70] Each member of the Executive Committee was to be entrusted with specific subjects to be allocated by the Chairman.[71]

The State Government was empowered to appoint a Chief Executive officer in the District Council.[72] The Chief Executive Officer was declared to be the Principal Executive Officer of the District Council and all other officers and servants of the District Council were made subordinate to him. He had the same right of being present at a meeting of the members of the District Council or of Executive Committee of the District Council or of any Committee established by the District Council, and of taking part of the discussions there at as if he was a member of District Council or a member of the Executive Committee or a member of any Committee and with the consent of the Chairman or the president of the meeting he could any time make a statement or explanation.[73] The District Council, however, on resolution carried at a special meeting called for the purpose and supported by the majority of the total number of members holding office for the time being, could request the State Government for replacement of the Chief Executive Officer and the Government would hereupon replace the Chief Executive Officer. However, this Government could any time withdraw the Chief Executive Officer from the District Council.[74]

(b) Powers and Functions of the District Council

(1) Subjects of Administration

Following matters, within the area of *Autonomous District*, were placed under the exclusive control and administration of the District Council, namely,

(a) allotment, occupation or use or setting apart of land for agricultural or other purpose, but land under reserved forest was excluded;

(b) management of forest other than reserved forest;

(c) use of canal or water course for agriculture;

(d) regulation of *juhm*;

(e) village or town committees or council;

(f) any other matter relating to village or town administration including police, health or sanitation.[75]

(2) Power to make bye-laws, regulations, etc.

The District Council had the power to frame bye-laws with respect to inheritance of property, marriage and divorce, social customs of the tribals and all or any matter of administration of the District Council.[76] The District Council had also power to make regulations for the regulation and control of money-landing or trading within the District.[77]

(3) Power to levy and collect taxes and fees

The District Council also had the power to collect, within the Autonomous District, professional tax, land revenue and agricultural income tax. The Council had the powers to levy and collect the fees for maintenance and development of schools, dispensaries or roads, and levy and collect fees on vehicles, animals.[78]

(c) Administration of Justice

One of the salient features of the TTAADC Act, 1979 was to provide for the decentralised justice delivery system at village level similar to *Nyaya Panchayats*. Section 37 of the Act provided for the

constitution of village councils by the Government of Tripura in autonomous district for trials of suits, cases and offences. The village councils were empowered to try civil suits and criminal offences. In civil matters, the Village Councils could try cases where the suit value did not exceed Rs. 1,000 with respect to : (i) money due on contract, (ii) recovery of property or for the value thereof, (ii) compensation for the wrongfully taking or injuring any property, (iv) damages caused by cattle trespass. The Village Councils were also empowered to try offences : (i) under sections 379 and 380 of the Indian Penal Code where the value of stolen property did not exceed Rs. 500, (ii) cases arising out of any bye-laws, regulations offences or abatement thereof which are not punishable with death, imprisonment for life or a term not exceeding 6 months, (iii) cases arising out of any bye-laws, regulations or rules in force in the *Autonomous District* and could impose fine not exceeding Rs. 300. Section 38 provided that appeal could lie to the District Judge for civil matters, and Session Judge for criminal matters against final decision of the Village Councils. Section 39 provided that if any fine or portion thereof remained unpaid, the same could be deemed to be dues to the Government and could be realised as arrears of land revenue under the provisions of the Tripura Land Revenue and Land Reforms Act, 1960. According to Section 40 Government was empowered to make rules regulating :

(i) compositions of village councils and the number of Village Councils that could be set up defining heir territorial limits within the *Autonomous District*;

(ii) procedure regarding cognizance by Village Councils;

(iii) procedure to be followed by the Village Councils in the trial of suits, cases or offences;

(iv) all other ancillary matters for carrying out the provisions of Sections 37 and 38.

(d) District Council Fund

Section 41 of the TTAADC Act, 1979 provided for the Constitution of a District Council fund for the administration of *Autonomous District*. All moneys received by the District Council for the administration of *Autonomous District* was to be credited to the said fund.

(e) State control over the District Council

State Government had the control over the District Council. Section 48 provided that the State Government had the power to appoint a Commission to enquire into and the report on the administration of *Autonomous District*. The report of the Commission with recommendation of the Government could be laid before the legislature of the State by the Government together with an explanatory Memorandum regarding the action proposed to be taken by the Government thereon. Section 49 provided that "if any time the Government is satisfied that a bye-law or resolution or regulation or rule of the District Council is likely to endanger the safety or security of the State or is likely to be prejudicial to public order, the State Government may annul or suspend such bye-law, resolution or regulation, as the case may be, and take necessary steps." Section 50 provided that the State Government may, at any time, on the recommendation of the Commission appointed under Section 48 order the dissolution of the District Council and direct for a fresh general election shall be held immediately for the reconstitution of the Council or place the administration of the District to the Commission or any other body for a period not exceeding 12 months. Section 51 provided that if any provision of a bye-law or any regulation made by the District Council is repugnant to any provision of a law made by the legislature of the State of Tripura with respect to that matter, then, the law or regulation made by the District Council, shall, to the extent of the repugnancy be void and the law made by the legislature of the State of Tripura shall prevail. Section 52 empowered the State Government to make rules for any matters which may be considered necessary or expedient in order to give effect to the purpose of this act.

(ii) Functioning of the District Council under the Act

In exercise of the powers conferred by the Sections 18 and 52 of the TTAADC Act, 1979, the State Government of Tripura framed the *Tripura Tribal Areas Autonomous District Council (Conduct of Election) Rules, 1980*. But in the same year a communal riot took place in Tripura between tribal and non-tribal populations which disturbed the public life.[79] As a result the first general election was held in January, 1982. Hence, the *Tripura Tribal Area Autonomous District Council* was constituted through vote by the secret ballot.

Immediately after its formation, the Council started functioning to develop the backward areas in general and improve the living condition of the tribal and non-tribal populations within the Council area in particular. The Council was set up with 28 elected representatives. In accordance with the District Council Act, a Chairman and a Vice-Chairman were elected through vote from amongst 28 members. Thereafter five Executive Members were appointed by the Chairman. The Executive Committee of the Autonomous Council was thus constituted with seven members including the Chairman and Vice-Chairman. In terms of Section 27(1) of the TTAADC Act, 1979, the Executive Committee headed by the Chairman run the administration. In terms of Section 29(1) of this Act, the subjects were entrusted to the members of the Executive Committee. In terms of Section 46 of this Act, the District Council set up different committees for swift execution of development schemes. Seven Consultative Committees were formed to formulate policies and programmes on different subjects entrusted to the members of the Executive Committee. These Consultative Committees were : (1) Land and Agriculture Committee, (2) Welfare of Scheduled Castes and Scheduled Tribes Committee, (3) Primary Education Committee, (4) Industry Committee, (5) Social Customs and Forests Committee, (6) Community Development Committee and (7) Public Health and Transport Committee. The Consultative Committees were headed by respective Executive Members in charge of the allotted subjects and there are three elected members of the District Council on each Committee. Besides these Consultative Committees, 28 Zonal Committees were formed in each of the 28 constituencies of the Council. A Zonal Committee consists of two Council Members and an officer assisted the Committee in its work. The subjects dealt with by the Zonal Committees related to *Jhumia* settlement and lend distribution. In terms of Section 45 of the Council Act, a general meeting of the District Council was held every six monthly in which decisions on different administrative, financial and development programmes were arrived. Following formation of the Council, officers were appointed to look after executive work. In pursuance of Section 30 of the Act, a Chief Executive Officer of the rank of secretary was deputed to the Council by the State Government. Four Executive Officers were also appointed. In addition, there were 10 Principal Officers in Education, Land, Industries, Tribal welfare, Co-operation, Agriculture, Forest, Public

health, Animal Husbandry and Engineering. Although the District Council had powers to appoint its own staff in terms of the recruitment and appointment rules approved by the State Government, the development programmes of the Council were implemented by the Government agencies functioning at the block level. The Sub-Divisional Officers and Settlement Officers of the Revenue Department under the State Government assisted the District Council to set up new block or create sub-blocks within the existing ones in consultation within the State Government. There were 17 blocks in the State located fully within the Council area.[80] Although the District Council started functioning from 1982 but it had a very short life for about three years and thus, it is not possible to comment on the impact of the measures taken under TTAADC Act, 1979.

(B) Tripura Tribal Areas Autonomous District Council Under the Sixth Schedule to the Constitution of India

(i) Forty-ninth Amendment to the Constitution and Tripura Tribal Areas District

Even the above mentioned measure of the State could not satisfy the aspirations of the Tribal people of Tripura. The demand for extension of the *Sixth Schedule* to the Constitution of India to Tripura and establishment of the *Tripura Tribal Areas Autonomous District Council* under the *Sixth Schedule* in place of existing State Legislation of 1979 was growing. In response to this popular demand the special provisions of the *Sixth Schedule* were extended to the tribal areas in the State of Tripura by the forty-ninth amendment of the Constitution in 1984.[81] The object and reasons of the amendment was as follows :

> The Tripura Legislative Assembly passed a resolution on the 19th March, 1982 and again on the 11th February, 1983, urging the Government of India to apply the provisions of the Sixth Schedule to the Constitution to the tribal areas of the State of Tripura. The State Government of Tripura, therefore, recommended amendment of the Constitution for the purpose. Though under the Tripura Tribal Areas Autonomous District Council Act, 1979, an autonomous District Council has been functioning in

> the State, it was considered necessary to give it constitutional sanctity with a view to meet the aspirations of the tribal population. The Council is expected to ensure rapid development of tribal areas and Self-Government by the tribals.[82]

The forty-ninth amendment of the Constitution incorporated the name "Tripura" into Article 244 and *Sixth Schedule* to the Constitution. Hence, the Article 244(2) now States that : "The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram." And paragraph 20(3) of the Sixth Schedule declares that : "Tripura Tribal Areas District shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979". Thus, the newly amended *Sixth Schedule* to the Constitution, *inter alia*, suggested to constitute District Council in the Tripura Tribal Areas District within the same territory which was earlier specified in the First Schedule to the *Tripura Tribal Areas Autonomous District Council Act, 1979*, for the Administration of such areas.

(ii) Formation of the Tripura Tribal Areas Autonomous District Council under Sixth Schedule to the Constitution of India

As a result of the forty-ninth amendment of the Constitution of India, the Tripura Legislative Assembly had enacted the *Tripura Tribal Areas Autonomous District Council (Repeal) Act, 1985*[83] to repeal the *Tripura Tribal Areas Autonomous District Council Act, 1979*. Hence, the said Act of 1979 was repealed and the existing District Council stood dissolved. In place of that a new *Tripura Tribal Areas Autonomous District Council* came into being on lst April 1985 under the Sixth Schedule to the Constitution of India. To implement the Constitutional provisions, the *Tripura Tribal Areas Autonomous District Council (Constitution and Election) Rules, 1985* (hereinafter referred to as District Council Rules, 1985) were passed in the State Cabinet on 7th May 1985. For constitution of Autonomous District Council under the *Sixth Schedule* to the Constitution, election was held through secret ballot within the District Council areas on June 30, 1985. The election was held in all the 28 constituencies. The elected members of the Council were sworn in on the 19th July, 1985 and the Chairman and Chief Executive Members were also

elected on the same day by the Members of the District Council. The above mentioned District Council Rules, 1985, provide for the area, its composition, Chairman, Executive Member, Officers and their powers and functions, and conduct of Business of the District Council.

(a) Area of the Autonomous District

The Tripura Tribal Areas Autonomous District comprises 463 villages. Though they do not form a wholly compact area as in Meghalaya or Assam, yet they form certain blocks of areas which are reasonably compact. There are 47 whole tehsils covering 299 villages, and only 164 villages are included in part-tehsils.[84] There are 872 Revenue villages in the State, so the total number of villages included in the Autonomous District comes to 53% of the total number of villages of the State. In area the Autonomous District comprises 68.7% of the total area of the State (*see* Table 5.3).

(b) Population of the Autonomous District

The total population of the Autonomous District is 8,87,300. It thus contains 32.18% of the total population of the State. Out of the total population of 8,87,300 in the Autonomous District, as many as 6,62,703 (or 74.69%) belong to the Scheduled Tribes. This tribal population of the Autonomous District forms 77.6% of the total tribal population of the whole State (*see* Table 5.3).

(c) District Council Composition

Similar to the TTAADC Act, 1979, the District Council Rules, 1985 provide that the District Council is to consist of 28 elected members on the basis of adult suffrage from territorial constituencies, out of which three fourths (i.e., 21 membership) is to be reserved for scheduled tribes. But the District Council Rules, 1985 added that the Governor may nominate maximum 2 persons as members of the District Council.[85] Similar to the TTAADC Act, 1979, the District Council Rules, 1985 provide that the elected members of the District Council hold office for a term of five years from the date of first meeting of the Council after the general election of the District Council. In addition to this, the District Council Rules, 1985, provide that if the District Council is sooner dissolved in accordance with the provision of the *Sixth Schedule* to the Constitution, the term of the office of the members is no longer

Table 5.3 : Area and Population of the State of Tripura and Autonomous District of Tripura (as per 1991 Census)

1	2	3	4	5	6	7	8	9	10	11	12	13
Area (Sq. K.M.)			Population of the State Tripura					Population of Autonomous District Area (ADA)				
						% of Population					% of Population	
Total area of State	ADA	% of ADA to total State area	Total Population	SC Population	ST Population	SC	ST	Total Population	SC Population	ST Population	SC	ST
10,47,879	7,132.56	68.07	27,44,827	4,51,116	8,53,345	26.36	30.95	8,87,300	57,045	6,62,703	6.43	74.69

14	15	16	17	18	19
ST Population of State	ST Population of ADA	% of ST Population of ADA	Total Population of State	Total Population of ADA	% of Population of ADA
8,53,345	6,62,703	77.66	27,57,205	8,87,300	32.18

continue. A nominated member holds office at the pleasure of the Governor. Under the District Council Rules, 1985, the Chairman, Vice-Chairman, Executive Members, Executive Officers and their powers, functions and conduct of business are similar to the TTAADC Act, 1979.[86]

(d) Law making procedure

The District Council has the power to make law, rules or regulations which is being conferred by the *Sixth Schedule* to the Constitution of India. Thus the District Council Rules, 1985 provide that any proposal to make any law, rules or regulations under the provisions of the *Sixth Schedule* to the Constitution of India, is to be placed before the Council by the Executive Member incharge of the department to which the subject matter of such law, rules or regulations relate. The Council after discussion and consideration may either pass or disagree to pass such proposed law, rules or regulations. However, the Council may before the proposed law, rules or regulations are passed refer it to a Committee, as the Council may decide, for examination and report. The council will present the report for discussion and consideration.[87] All the law, rules or regulations thus made and confirmed by the District Council is to be signed by the Chairman of the District Council. At least three copies of such laws, rules or regulations shall be sent for approval of the Governor through the Chief Executive Officer of the Council. The Chief Executive Officer of the District Council shall arrange for publication of all such laws, rules or regulations approved by the Governor in the Tripura Gazette and on such publication the approved laws, rules or regulations shall come into force.[88]

(iii) Functioning of the Tripura Tribal Areas Autonomous District Council under Sixth Schedule to the Constitution of India

(a) Administrative set-up

The Tripura Tribal Areas District was established on lst April, 1985 under the provisions of the *Sixth Schedule* to the Constitution of India and the Council was formed on 19th July, 1985. Since then the Chairman and the Chief Executive Member are being elected from time to time. The Council Administration is headed by the Chief Executive Officer who is normally an IAS Officer, assisted by a Dy. Chief Executive Officer, a TCS Gr. I Officer and an

Executive Officer of the rank of the TCS Gr. II officer. In addition, there are following Principal Officers as departmental heads :

1. Principal Officer (Agriculture Department)
2. Principal Officer (Animal Husbandry Department)
3. Principal Officer (Co-operative Department)
4. Principal Officer (Education Department)
5. Principal Officer (Engineering Department)
6. Principal Officer (Fishery Department)
7. Principal Officer (Forest Department)
8. Principal Officer (Health Department)
9. Principal Officer (Information, Cultural Affairs, Youth Programme, Sports, Science and Technology Department)
10. Principal Officer (Industry Department)
11. Principal Officer (Land Record and Settlement Department)
12. Principal Officer (Law Department)
13. Principal Officer (Tribal Welfare Department)
14. Principal Officer (Panchayat Department)

The Planning Cell is looked after by a Senior Research Officer. The PWD is managed by the Superintending Engineer with three Executive Engineers and other field staff. The Education Department has also its own set-up in the field.

Four Zonal Development Offices were established initially during the time of the first Council established under the TTAADC Act, 1979. The Four Zonal Development Offices are located at the following places:

1. Khumulwng (Radhapur, West Tripura District)
2. Birchandra Manu (South Tripura District)
3. Gandacherra (South Tripura District)

4. Manughat (North Tripura District)

All these offices were run in the temporary hired buildings. The present Council under *Sixth Schedule* has constructed only one building at Birchandra Manu in 1992.

There are nineteen Sub-Zonal Development Offices, out of which four were established by the previous Council (established under TTAADC Act, 1979) and the rest have been set up by the present Council (established under the Sixth Schedule).[89] They are: (1) Bisramganj, (2) Mungiabari, (3) Kanchanpur, (4) Sindukpathar, (5) Silachari, (6) Chellagong-mukh, (7) Chechua, (8) East Manu, (9) Dupthali, (10) Killa, (11) Takarjala, (12) Mandai, (13) Madhuchondhury, (14) Baijalbari, (15) Gopalnagar (16) Chaumanu (17) Kumarghat (18) Longai Valley (19) Raisyabari

The Sub-Zonal Office at East Monu, Chellagong, Chechua, Bishramganj, Mungiabari and Sikaribari have been functioning in their own permanent building. Permanent construction for the above mentioned three Zonal Officers and thirteen sub-zonal officers are now under process and suitable lands are being located, but due to financial constrains the Council is not in position to expedite the constructional work. At the present moment, the Zonal and Sub-Zonal Offices are being run with the officers and staff on deputation.

(b) Developmental Activities

Since the inception of the *Tripura Tribal Areas Autonomous District Council* (TTAADC) under the *Sixth Schedule* to the Constitution, it has devoted itself to manifold activities and chalked out programmes for the economic upliftment of the people through its 12 departments, namely, Agriculture, Animal Husbandry, Co-operation, Education, Engineering, Fishery, Forest, Health, Cultural Affairs, Industry, Land, Tribal Welfare. At present the Panchayat Department is not functioning. In this connection the TTAADC has enacted law for the establishment of *Panchayat Raj* institution at TTAADC area, but the general election has not been held so far for the Constitution of Town and Village Committees. Still the matter is in the Gauhati High Court for the delimitation of the boundaries of the Autonomous District. Each department has its own schemes for generation of gainful employment for the poor

people and alleviate their poverty and help them to stand on their own feet. A brief description of the schemes as being executed during last 13 years (1985 to 1998)[90] by different departments are given below :

(1) Agriculture Department

Agriculture department of TTAADC deals with the developmental activities of Agriculture, Horticulture, Soil and Water Conservation, Market Development and Composite Farm. The schemes for rehabilitation of *Jhumias* have been taken up in order to wean them away from their old traditional system of *Jhuming* which is considered to be not only uneconomical from the farming point of view but also wasteful of forest wealth and manpower resources as well as to prevent heavy soil erosion. During 1985-90, the scheme of rehabilitation of landless tribal *Jhumia* families were undertaken. Under this scheme of rehabilitation 500 tribal landless *Jhumia* families were taken up through coconut, pineapple, banana, paddy and orange plantation programmes. Total expenditure involved on this account was Rs. 97 lakhs and 73 thousands. From last 8 years (frcm August 1990) the Agriculture Department gave more emphasis on production of food grains. In this regards 105 Nos. power tiller had been distributed among the farmers of TTAADC areas on subsidy to increase their efficiency on cultivation practices. Some hiring centres also been opened and 12 Nos. power tiller are being kept for the use of farmers in their field. Some hiring charges are taken from the farmers in this respect. For increase the irrigation facilities this Agriculture Department supplied 420 Nos. 5 HP pump set on subsidy. The distribution of another 300 Nos. 5 HP pump set is also going on. 170 Nos. shallow tubewell fitted with Tulu pump also been distributed. For spraying of plant protection chemicals 93 Nos. H.C. sprayer, 20 Nos. foot sprayer were given and 17 Nos. paddle thresher also been supplied and utilizes by the farmers. For transportation of inputs, farm products 284 Nos. Push Cart were distributed. Increase in the vegetable production in TTAADC areas some important steps have been taken up by this department. As a result 1800 Nos. families were benefited through highly yielding variety vegetable cultivation and 800 Nos. family through other vegetable cultivation. Agriculture Department arranged the demonstration of different crops in *tilla*

land for motivating tribal farmers to utilize their *tilla* land. Total 690 Nos. tribal farmers were benefited through cultivation of Mesta and Groundnut, 2 Nos. Godown also been constructed for storage of agricultural inputs. In fruit cultivation, 1050 Nos. tribal family were benefitted. In Market Development scheme, this department constructed 29 Nos. sale stall and 9 Nos. market shed till December 1998.

(2) Animal Husbandry Department

The Animal Husbandry Department of TTAADC is working with the aim of socio-economic development of people living in TTAADC areas through creation of permanent assets and self-employment programmes. The developmental schemes of Animal Husbandry are mainly beneficiary oriented aiming to reach the poor tribal families so that they can be assisted with inputs that would stand them in good stead in rearing birds and animals which they are accustomed to for generations. The assistance under each scheme included supply of birds or animals with proper houses, food, medicine and insurances. During 1985-90, 6102 families were brought under 29 Animal Husbandry schemes with total expenditure of Rs. 343.30 lakhs. During 1990-95, an expenditure for Rs. 240.22 Lakhs was made in implementation of 23 Animal Husbandry schemes among 3,315 families. It must be mentioned here that during 1990-91 two new schemes, namely, *Self-Employment through Broiler Farming* and *Rehabilitation through Intensive Goat Farming* were introduced which became very popular and successful. During the period (1990-91) an expenditure of Rs. 52.73 lakhs was made to cover 615 families. During last three years (from August 1995 to December 1998), Rs. 28.41 lakhs was spent for providing veterinary services with distribution of medicines and vaccination etc. 1230 Nos. of beneficiaries was trained up on scientific rearing and management of animals. Financial assistance for purchase of milch cow 334 Nos. of beneficiaries was provided for which Rs. 17.76 lakhs only was spent. For construction of scientific Pig house, purchase of exotic Pig and Pig-ration, Rs. 64.20 lakhs was spent for assistance of 1284 Nos. beneficiaries. Two Nos. Pig breeding farm at Manikpur and Birchandramanu was established to fulfil the demand of exotic Piglets. Another one at Khumulwng is in progress. 80 Nos. families were assisted towards self-employment through Broiler Farming.

160 Nos. families also were assisted towards self-employment through intensive goat farming. Besides this, 1447 Nos. families were assisted through duck farming.

(3) Co-operative Department

Co-operative plays a very important role in the socio-economic development of the people in our country. In the TTAADC, 55 large sized multipurpose co-operative society (LAMPS) have been registered under *Tripura Co-operative Societies Act, 1974*. Each such LAMPS has been organised in an area having a minimum population of 10,000. The main objectives of the LAMPS are to help the tribals and others to ameliorate their socio-economic condition by providing them integrated credit and other services and facilities for increasing production, generating employment opportunities, undertaking distribution of essential commodities and marketing of agricultural as well as forest products. It is expected and desired that the tribal people residing in the interior areas should get their requisites from a single contact point. During 1985-96, the LAMPS have enrolled 92,310 members out of which 75,459 belonging to Scheduled Tribes and 5,126 to Scheduled Castes, the rest 12,310 belong to other castes. Thus percentage of coverage in the membership in the TTAADC area has been 74%. During 1985-1996 an amount of Rs. 221.41 lakhs was provided for constructing Mini Departmental Stores/Branches building, providing capital trading activities in consumer's goods, medicine, firewood, opening up fair price shop, repairing of damaged godown, constructing depot for K. Oil, purchasing sprayer machine, furniture and fixtures, providing managerial and transport subsidy and organising awareness programmes about co-operative movements. The above mentioned schemes of LAMPS continued up to 1996. The TTAADC authority has taken decision not to continue the above mentioned schemes within TTAADC area from 1996-97. Further decision has been taken by the TTAADC authority to establish show-room with godown in all zonal headquarters.

(4) Education Department

Education is the main instrument of social change, without which the objectives of the TTAADC cannot be achieved. And with this end in view, the TTAADC planned its educational activity

including adult education. Thus the Education Department is the biggest department of the TTAADC having two wings, namely, School Education and Social Education.

(i) School Education

In 1985, consequent upon the formation of TTAADC under the *Sixth Schedule* to the Constitution, TTAADC took over 1068 Primary Schools with 3,200 teachers. But during the 7th plan period (1985-90), TTAADC prepared its educational plans giving due emphasis on the expansion of educational facilities in remote areas. The total 7th plan provision in respect of School Education was Rs. 574.90 lakhs against the total TTAADC plan provision of Rs. 4425.00 lakhs (13%). During the years 1990-95 the plain provision was 1147.00 lakhs (14.30% of the total TTAADC plan allocations). Some of the achievements made during 1985-95 in the field of the School Education were : (a) 233 new Primary Schools have been started, (b) 1452 teaching staff and 91 ministerial staff have been appointed in the department for strengthening the functioning of the schools and officers, (c) 54 Primary Schools were upgraded to Senior Basic Schools and handed over to the State Education Department. During last 3 years (from August 1995 to December 1998) 16 new schools and 1 English Medium Residential School started. 65 Schools earmarked as Model School. 652 School buildings constructed at the cost of Rs. 74 lakhs.

(ii) Social Education

The majority of the population in the TTAADC areas are illiterate. It is almost an impossible task to bring about socio-economic improvement through the process of development with a vast mass of illiterate people. Literacy is a pre-condition of development process. The Council was conscious of this fact and therefore with a view to making the people free from this curse and to increase the socio-economic awareness of the people, TTAADC decided to activate the programme of social education and adult literacy in TTAADC areas. And with this end in view, the TTAADC took over 391 Social Education Centres and 584 Adult Literacy Centres from the State Education Department along with existing staff in 1986. Presently 432 Social Education Centres are functioning. Short Course Training Programme for 140 social workers were arranged, 135 Social Education Centre buildings renovated, Pacca construction for 84 Social Education Centres

taken up during 1995-1998. Initiative has been taken to develop the Kok-Borok language. 5000 Kok-Borok words have been compiled in 3 workshops.

Thus, the Education Department has been functioning without adequate supporting supervisory staff. Over and above, there are constrains of financial resources which stood in the way of implementing development schemes.

(5) Engineering Department

The Engineering Cell of TTAADC is playing a key role in development of communication, rural water supply, construction of buildings, implementation of irrigation schemes and establishment of headquarter complex. The activities under communication schemes are taken up mainly from the fund received under two sources. One as transferred fund from the State Government against the transferred roads, secondly, as plan fund from the Tribal Welfare Department against Block Roads and village roads and foot tracts. During the period 1985-90 an amount of Rs. 716.00 lakhs was received by the TTAADC against transferred and plan funds. The achievement, however, during the period from 1985-90 was falling short of desired level as the department was in the initial stage of growing. Even with these constrains, 96 Nos. of roads schemes were sanctioned and taken up. Subsequently, the number of schemes taken up under communication was much more. During the period from 1990-95 an amount of Rs. 1304.14 lakhs had been sanctioned under which a total of 490 Nos. of road schemes had been undertaken and completed. During the period from 1995-98 an amount of Rs. 978.94 lakhs had been sanctioned under which 423 Nos. road had been taken up and completed. During the period from 1985-98 the building works taken up are construction of headquarter, sale halls, sale stals, sub-centres and primary schools. The achievement during this period is 87 Nos. of sale stalls, 5 Nos. of sale halls, 2 Nos. of sub-centres, 38 Nos. of primary schools and 47 buildings have been constructed in the Headquarters complex. Through rural water supply scheme 355 Nos. Mark-II tubewell has been installed and 1245 Nos. senitarywell has also been constructed during the period from 1985-88.

(6) Fishery Department

Fishery Department of the TTAADC deals with development of socio-economic conditions of the poor tribals by motivating them towards fish culture and other associated trades. In this connection provisions have been made for imparting fishery training for fish breeding, net weaving, making of fishing traps/ buskets, etc. Provisions have also been made for financial assistance to the trained tribal youth for starting their business at there own for self-employment. The department has taken up rehabilitation of tribal *Jhumias* through pisciculture. During 1985-98, 9 Nos. of colonies have been established by which 630 Nos. of families were rehabilitated. Against this scheme an amount of Rs. 163.23 lakhs was spent. The department has reclaimed 543 numbers of water areas in addition to creation of 1088 number of new water areas. Besides this, the department has supplied fishery inputs for fish culture to 3229 numbers of fish farmers. 11 numbers of fish farmers have also been brought under fish seed production. The department have taken up extensive extension programmes by way of demonstration in 204 numbers of private tank and trained up 1650 numbers of fish farmers in improved fish culture. The department has self employed 104 Nos. of youths by distributing Drag nets and boats. During 1995-98, 2127 matric tons of additional quantities of fishes have been produced out of the assets created by the Council.

(7) Forest Department

The TTAADC has power to manage the entire forest not being reserved forest as per the paragraph 3(b) of the *Sixth Schedule* to the Constitution of India. The TTAADC has framed its legislation to manage and control the unclassified forest, i.e. other than khas land. The forests within the TTAADC are used to be luxuriant with greenery all over the rural areas. However, because of indiscriminate felling and illegal destruction of trees, now there are a lot of degraded and waste lands. The wild fire, reckless felling of trees and unscientific *Jhuming* have also been one of the causes of forest degradation. The ever increasing population growth has left a tremendous pressure on existing vegetation and the valuable forests is accounted to be 0.02 hectare per-capita at present. The forest department of TTAADC has been formulated aforestation schemes in order to make a suitable economic base for the tribes

who are mostly dependent on *Jhum* cultivation and other marginal framing. The afforestation programmes have sought to utilise a vast un-productive land. During 1985-95, 19 afforestation schemes were undertaken under which 10466.30 hectares lands were covered through forest plantation. During 1995 (from August) - 1998, only 860 hectares lands were taken up for forest plantation (Rubber Plantation).

(8) Health Department

The health department of TTAADC has its own limitation as regards resources and infrastructure and yet to service has been reduced the members of the public though not to the desired intent. About 8% of the population of TTAADC area are below to poverty line. Such huge numbers of people cannot take proper care of their health as they live in inaccessible areas. To overcome such a major hardle, the health department came forward with all sorts of helps and assistance for taking proper care of health of the people of remote areas. In 1985 there were 2 Rural Hospitals, 14 Primary Health Centres, 125 Health Sub-centres, 1 Homoeopathic and 1 Ayurvedic dispensaries within TTAADC areas. During 1985 to 1995, 27 Nos. of Health Sub-centres and 1 Nos. of Mobile dispensary unit have been established. The schemes of free treatment and free distribution of medicines through Health Campus, Primary Health Centre, Sub-centre and Mobile dispensary unit to the people of TTAADC area have been taken up. During 1995-1998, construction of work of the 6 bedded Hospital at Khumulwng was completed and the Hospital has started functioning. Another constructed work of 6 bedded Primary Health Centre has been completed at Mandai and the construction work of 6 bedded Primary Health Centre at Burakha is almost going to be end. Construction work of 16 Nos. Sub-centres have been completed and 503 Nos. of Health Camp was held and 1,97,195 Nos. of patients were treated. One Homeopathy Dispensary has been started at Khumulwng. 49 Nos. Health Guide Training has been completed and another 72 Nos. Training yet to be completed.

(9) Information, Cultural Affairs and Youth Programme Department

Man is a conscious producer as well as a social creator. From the primitive to the present times, the history of mankind has been

shaped and reshaped by these socially creative producers. It is the great teaching of the history that only the higher level of consciousness can inspire people to reshape the society to the advantage of the masses. In rising the level of consciousness, culture plays an important role. Realisation of this kind has guided the TTAADC to undertaken cultural activities. The Information, Cultural Affairs and Youth Programme Department plays a vital role to assimilate the people about the activities of TTAADC through booklets, pamphletes, feature, poster, press release etc. During 1985-90, this department arranged village level cultural festival in every year in a limited scale and took up some measures for public relation. This cultural festival made significant contribution toward strengthening the bonds of amity and unity between the tribal and non-tribal communities. During this 5 years the total fund allotment of the department was Rs. 42.25 lakhs. From the August 1990 to August 1995 this department published 6 leaflet in Kokborok, Bengali and English. Moreover, the department has taken initiate and published a pioneering book, namely, *Ochai Yakhwai*. Total 202 sets of musical instruments have been distributed in free of cost during this five years. Moreover, department has taken initiative to organise cultural programmes in different places. The total fund allotment of the department during this years was 55.35 lakhs. For the development of tribal culture this department constructed 21 Nos. community hall and introduced a Tribal Cultural Academy during 1985-1995. For upliftment of *Kok-Borak* language and literature this department has published a Kok-Borak literary magazine, named, *Khumulwng*. This department has also released two cassette of the traditional tribal folk song *Jadn Kalija* and *Kok-Borak* modern song. 3 *Jadn Kalija* Festival, 1 drama workshop, 33 cultural workshop, 10 modern musical workshop and State level *Garia* Festival has been arranged during 1995-1998.

(10) Industry Department

Industry department of the TTAADC has been undertaken five types of integrated schemes for the economic upliftment of the people within TTAADC area. These schemes are: Industrial training centre scheme; distribution of yern to poor and distressed tribal (women) weavers scheme; Assistance to rural artisan and ex-trainees scheme; Sericulture scheme; and Study tour scheme.

During 1985-1998, 46 Nos. training centres on different trades have been set up within the TTAADC areas under the "industrial training centre scheme". Its main object is to train the unemployed tribal youths on different trades so that they can earn their bread. Among these training centres, there are 17 Nos. weaving training centre, 16 Nos. cane and bamboo training centres, 8 Nos. tailoring training centres, 2 Nos. bee keeping training centres and 3 Nos. carpentry training centres. Each training centre consists of 10 Nos. student trainees who are paid stipend Rs. 150 per month. It may also be mentioned here that 1270 Nos. student trainees have already been taken their training from these centres. Under the "distribution of yarn to poor and distressed tribal (women) weavers scheme", the department provided yarn to the selected distressed tribal women weavers, free of cost, so that they could meet their requirements of clothing and they can keep up their traditional profession. During 1985-1998, 1,40,844 Nos. tribal women weavers were distributed yarns, free of cost. To help the poor village artisans and ex-trainees, financial assistance were provided to carry on their profession. During 1985-98, 1933 Nos. of beneficiary covered on this scheme. In this scheme, tools of cane and bamboo - 100 Nos., carpentry 170 Nos., Mark II tube-well 150 Nos., sewing machine 247 Nos., selone 165 Nos., and weaving machine 147 Nos. were distributed free of cost to the selected beneficiaries. The sericulture scheme has been introduced in 1990. During 1990-98, 6 Nos. of sericulture farms have been established within the TTAADC areas. In 1991, the "study tour scheme" have been introduced for study tour of the village weavers, craftsman, sericulturists and other persons engaged in different trades in TTAADC area, in different places of importance, in and outside the State for acquiring improved technique and knowledge about the trade. During 1991-98, 625 persons were sent to different places for study tour.

(11) Land Record and Settlement Department

The main object of the Land Record and Settlement department is to distribute lands to landless person for construction of the dwelling houses and agricultural purposes. It is evident that unless the landless persons are rehabilitated with land they cannot be self sufficient economically. Keeping in view of this objective, the TTAADC has laid special emphasis on

allotment of land to landless tribals, *Jhumias* within the TTAADC area. During 1995 to 1998, the Land Record and Settlement department received a total 78,815 Nos. application for land allotment. Out of these applications, 57,571 Nos. of applications have been approved and orders of allotment have been made by the department. In the year 1991, the new scheme, namely, "Integrated *Jhumia* Settlement Scheme" came into operation. During 1991 to 1998, the department has taken 45 Nos. of projects for rehabilitation of 3,000 *Jhumia* tribal families based on agriculture, animal husbandry, forestry and pisciculture.

(12) Tribal Welfare Department

The Tribal Welfare department looks after 9 schemes which are directly beneficial to the tribal people of the TTAADC area. A large number of *Jhum* cultivators as well as poor tribal landless agri-workers live in the TTAADC area and this department lays special emphasis on the upliftment and improvement of their overall socio-economic conditions by providing additional sources of livelihood and income. These 9 schemes are: distribution of *Jhum* seeds, assistance for sowing of *Jhum* paddy seeds and weeding operation, *Jhum* cutting and preparation of *Jhum* land, housing for deserving tribals, assistance for construction of business shed for tribals, *Jhumia* re-settlement, tribal resthouse, special incentive to tribal areas, nucleus budget. Under the "distribution of *Jhum* seeds scheme", 20 kg. of *Jhum* paddy seeds were given free of cost every year per *Jhumia* family since 1985. Under this scheme 26,000 families were beneficiary. The purpose of the assistance for sowing of *Jhum* paddy seeds and weeding operation scheme is to help the distressed and hardcore *Jhumias* in sowing seeds and weeding *Jhum* fields. Under this scheme, 13,060 tribal families were beneficiary during 1985 to 1998. Under the *Jhum* cutting and preparation of *Jhum* land scheme, financial assistance has been given. During 1985 to 1996, an amount of Rs. 16,25,19,800.00 was incurred under this scheme and for this 2,92,000 families have been benefited. The "scheme of housing for deserving tribals" has been started since 1995. During last 3 years (1995 to 1998) an amount of Rs. 84,68,000.00 have been spent for the construction of model houses of 439 tribal families. In 1995, the "scheme of assistance for construction of business shed for tribals" has also been started. Under this scheme a lampsum amount of Rs. 15,000 is given to a

tribal businessmen for the construction of shed and working capital. During last 3 years (1995 to 1998) 678 Nos. tribal businessmen were given financial benefit of Rs. 1,01,70,000.00 for construction of business shed and running business. The main characteristic of the "*Jhumia* re-settlement scheme" is that the beneficiaries are allowed to chose the activities that suit them within the unit cost and prescribed period. Under this scheme Rs. 25,000.00 per Jhumia family has been granted for the purpose of agriculture, horticulture, animal husbandry, fishery and forest plantation to be implemented in 5 years period. Under this scheme 253 Nos. families were given financial benefit of Rs. 63,25,000.00 during 1985 to 1998. Under the "tribal resthouse scheme", for the construction of tribal resthouses in 6 places of TTAADC area, Rs. 17,97,000.00 have been incurred. Under the special incentive to tribal areas scheme, voluntary and philanthropic organisations are assisted through this scheme to establish educational institutions, training-cum-production centres, and health centres for the benefit of the people of the TTAADC area. During 1995 to 1998 an amount of Rs. 1,48,24,000.00 have been spent under this scheme. The main objectives of the "nucleus budget scheme" are to encourage innovative schemes, namely, to evolve scheme of local importance, to assist poor and deserving individuals to take up need based scheme not covered by the existing schemes. During 1985 to 1998 an amount of Rs. 390,00,000.00 have been spent to assist 5,925 distressed tribals in the form of grants for purchase of life saving medicines, bottles of blood, text-books etc. under this scheme.

Thus the TTAADC has been implementing various schemes through its 12 departments for the overall development of the tribals.

(c) Legislative Activities

Besides the developmental activities, the TTAADC has devoted itself for legislative activities through its Law Department. Since the inception of the TTAADC under the *Sixth Schedule* to the Constitution, it has enacted 34 Acts, Rules, Regulations, Amendments (till December 1998) and forwarded to the Government of Tripura for approval of the Governor. Among these 34 enactments 25 have received the assent of Governor, 2 have returned and 7 are awaiting for the assent of the Governor. Out of 25 assented enactments, 3 are Acts, 3 are Regulations, 6 are Rules and 13 are Amendments (*see* Table 5.4 below).

Table 5.4 : Enactments of the Tripura Tribal Areas Autonomous District Council

Sl. No.	*Name of Acts/Rules/Regulations/ Amendments*	*Date of passing*	*Date of Governor's assent*
1	*2*	*3*	*4*
1.	Salaries, allowances and other facilities to Chairman/CEM/ EMs and members of the Tripura Tribal Areas Autonomous District Council Rules, 1989	13-8-85	19-7-86
2.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (4th Amendment) Rules, 1985	13-8-85	21-10-86
3.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (5th Amendment) Rules, 1985	8-11-85	21-10-96
4.	Salaries, Allowances and other facilities to Chairman, CEM, EMs and members of the Tripura Tribal Areas Autonomous District Council (1st Amendment) Rules, 1985	13-11-85	22-10-86
5.	Salaries, Allowances and other facilities to Chairman, CEM, EMs and Members of the Tripura Tribal Areas Autonomous District Council (3rd Amendment) Rules, 1985	29-1-86	22-10-86
6.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (6th Amendment) Rules, 1985	30-1-86	22-10-86
7.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (7th Amendment) Rules, 1985	28-4-86	21-10-87

1	2	3	4
8.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (8th Amendment) Rules, 1985	30-10-86	21-10-87
9.	Tripura Tribal Areas Autonomous District Council (Establishment, Management and Control of Markets) Regulations, 1987	28-7-87	Governor's assent is awaiting
10.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (9th Amendment) Rules, 1985	18-1-88	30-4-90
11.	Tripura Tribal Areas Autonomous District Council Administration Rules, 1988	1-8-88	30-4-90
12.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (10th Amendment) Rules, 1988	1-8-88	30-4-90
13.	Tripura Tribal Areas Autonomous District Council Service Rules, 1988	1-8-88	Governor's assent is awaiting
14.	Tripura Tribal Areas Autonomous District Council Land (Allotment and Use) Rules, 1988	13-11-88	30-4-90
15.	Salaries, allowances and perquisities of Chairman, CEM, EMs and allowances of members of the Tripura Tribal Areas Autonomous District Council (3rd Amendment) Rules, 1989	27-1-89	30-4-90
16.	Salaries, allowances and perquisities of Chairman, CEM, EMs and allowances of members of the Tripura Tribal Areas Autonomous District Council (4th Amendment) Rules, 1989	9-8-89	30-4-90

1	*2*	*3*	*4*
17.	Tripura District Council Employees Group Savings Linked Insurance Scheme, 1989	2-8-89	30-4-90
18.	Tripura District Council Trading (Licensing and Control) Regulations, 1989	2-8-89	19-4-90
19.	Tripura Tribal Areas Autonomous District Council (Establishment of Town Committee) Act, 1989	10-11-89	12-7-91
20.	Salaries, allowances and perquisities of Chairman, CEM, EMs and leader of opposition and salaries, allowances and pension of the members of the District Council (5th Amendment) Rules, 1990	12-11-90	returned
21.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (11th Amendment) Rules, 1990	12-11-90	8-4-92
22.	Tripura Autonomous District Council Motor Vehicles and Boats (Taxation) Bill, 1991	11-9-91	Governor's assent is awaiting
23.	Tripura District Council Money Lending Regulations, 1991	11-9-91	Governor's assent is awaiting
24.	Tripura Tribal Areas Autonomous District Council (Land and Revenue) Bill, 1991	11-9-91	Governor's assent is awaiting
25.	Salaries, allowances and perquisities of Chairman, CEM, EMs and leader of opposition and salaries, allowances and pension of the members of the District Council (6th Amendment) Rules, 1990	12-9-91	Governor's assent is awaiting
26.	Tripura Tribal Areas Autonomous District Council (Constitution) Election and Conduct of Business (12th Amendment) Rules, 1991	12-9-91	Governor's assent is awaiting

1	2	3	4
27.	Tripura Autonomous District Council Control of Transfer of Land Bill, 1991	12-9-91	Returned
28.	Tripura Tribal Areas Autonomous District Council Primary School (Language) Regulations, 1992	9-3-92	6-10-97
29.	Tripura Tribal Areas Autonomous District Council Stall (Allotment) Rules, 1992	9-3-92	8-4-93
30.	Tripura Tribal Areas Autonomous District Council (Establishment of Village Committee) Act, 1994	27-4-92	28-2-94
31.	Tripura Tribal Areas Autonomous District Council Village Committee (Delimitation of Constituencies) Rules, 1994	25-9-93	20-7-94
32.	(Conduct of Election) Rules, 1996	5-3-96	2-9-96
33.	Tripura Tribal Areas Autonomous District Council (Preparation of Election Roll) Rules, 1996	27-5-96	30-12-96
34.	Tripura Tribal Areas Autonomous District Council Police Act, 1997	9-3-97	16-4-98

Now we propose to examine few of the assented enactments. In this connection we have selected all 6 assented Acts and Regulations. But among 6 assented Rules we have selected only one Rule, namely, *TTAADC Administrative Rules, 1988.* This Rule deals with the fundamental rule of the administrative allocation and disposal of business of the District Council. Remaining 5 Rules are related to either delimitation of constituencies or conduct of election, preparation of electoral roll, etc., no fundamental question of law are concerned. Therefore we do not propose to discuss these five Rules. So far as the Amendments are concerned, very small changes were made through all 13 Amendments. Therefore we do not propose to discuss these Amendments. Thus we have selected 7 enactments. These selected enactments are examined chronologically as under :

(1) Tripura Tribal Areas Autonomous District Council (Establishment, Management and Control of Market) Regulation, 1987

The District Council has enacted the *Tripura Tribal Areas Autonomous District Council (Establishment, Management and Control of Market) Regulation*, 1987[91], to regulate, control, establishment and management of market and to levy and collection of taxes on the entry of goods into such markets within the Autonomous District Council areas. The Regulation provides that all markets in the Tripura Autonomous District Council area shall be under the control of the Autonomous District Council and management concerned. No person shall start any new market except with these previous permission of the Executive Committee of the District Council.[92] The Executive Committee may either on an application or on its own initiative, establish a new market in such place or places as may be considered necessary.[93] The Executive Committee may close down temporarily or order the temporary closure of any market within the Autonomous District Council area for a period not exceeding 6 months at a time if: (a) there be out-break of epidemic in or around of market area; or (b) in its opinion there is reason to believe of the existence of such elements posing eminent danger either to the health or the safety of the people attending the marked.[94] The Executive Committee has also the right to levy and collect tolls and taxes. In this respect the Executive Committee shall prescribe the rate of market tolls or the rate of taxes leviable on the entry of goods into any market for sale therein.[95] Thus the Regulation has enacted provisions in respect of the establishment, management and control of markets and levy and collection of market revenue. This is the first Regulation which has enacted by the TTAADC under the *Sixth Schedule* to the Constitution.

(2) Tripura Tribal Areas Autonomous District Council Administration Rules, 1988

The District Council, in exercise of the powers conferred by sub-paragraph 7(b) of paragraph 2 of the *Sixth Schedule* to the Constitution of India framed the rules, called, the *Tripura Tribal Areas Autonomous District Council Administration Rules, 1988* (hereinafter referred to as the Rules).[96] The Rules deal with

allocation and departmental disposals of business of the District Council.

(i) Allocation and Disposal of Business

The Rules provide that the business of the District Council is to be allocated among the Departments.[97] The Chief Executive member of the District Council has been authorised to allot among the Executive Members, the business of the District Council by assigning one or more Departments to the charge of an Executive Member. Each Department of the District Council consists of the Principal Officer to the District Council, who is designated as the Official Head of the Department and of such other officers and servants subordinate to him as the District Council may determine.[98] The Executive Committee has been made collectively responsible for all executive orders issued in the names of the District Council.[99]

(ii) Departmental Disposal of Business

Cases are to be submitted by the Principal Officer in the Department to which the case belongs to the Executive Member in charge but cases shall ordinarily be disposed of by or under the authority of the Executive Member in charge.[100] If a question arises as to the Department to which a case properly belongs, the matter shall be referred for the decision of the Chief Executive Officer who will, if necessary, obtain the orders of the Chief Executive Member.[101] All communications received from the State Government, shall as soon as possible be submitted by the Principal Officer to the Executive Member in charge and to the Chief Executive Member for information.[102] Any matter likely to bring the District Council into controversy with the State Government shall as soon as the possibility of such a controversy is seen, be brought to the notice of the Chief Executive Member and Executive Member in charge.[103] The Finance Department shall be consulted by the Executive Committee before the issue of orders upon proposals which effect the Finance of the District Council. The views of the Finance Department shall be brought to the permanent record of the Department to which the case belongs and shall form part of the case.[104]

In respect of legislation, the Law Department is not an original and initiating Department and its proper function is to put into technical shape of the project of legislation of which the policy has been approved. Every proposal to initiate legislation shall be considered in the Department to which the said matter of legislation related and all matters of substance to be embodied in the bill be discussed.[105] Proposals to initiate legislation shall be treated as a case and shall be disposed of accordingly. But the case shall not be submitted to he Chief Executive Member until the Department concerned has consulted the Law Department as to :

1. the need for proposed legislation from a legal point of view,
2. the competence of the District Council to enact the measure proposed, and
3. the requirements of the Constitution and other Laws as to obtaining the previous sanction or approval of the Governor thereof.[106] When a bill has been passed by the District Council, it would be examined in the Department concerned and then the Law Department shall forward to the Governor. After obtaining the assent or approval of the Governor the Law Department shall take steps for the publication of the bill in the Tripura Gazette as an Act of the District Council.[107]

Thus the TTAADC has enacted the Administrative Rules for the allocation and departmental disposals of business of the District Council established under the *Sixth Schedule* to the Constitution.

(3) Tripura District Council Trading (Licensing and Control) Regulations, 1989

The District Council has also enacted the *Tripura District Council Trading (Licensing and Control) Regulations, 1989,*[108] to provide for the regulation and control of trading within the Tripura Tribal Areas Autonomous District Council area. According to the Regulations no person is permitted to carry on business of goods in the District Council area except under and in accordance with the terms and conditions of a licence issued under this Regulation by the Licencing authority.[109] Any person resident of the District Council area may apply for a trade licence to the Licencing authority in the form prescribed by the Executive Committee.

Every licence granted under this Regulation is chargeable with such fees as may be prescribed by the Executive Committee.[110] Licence granted under this Regulations continues in force for such period as may be fixed by the Executive Committee.[111] On the expiry of the period of validity a licence may be renewed on payment of such fees as may be prescribed by the Executive Committee.[112] The Executive Committee may fix the number of traders who may be allowed to carry on trade or business in any particular village, area or market. While fixing the number of traders the Executive Committee may also fix the minimum number of tribal traders who may be granted trade licence in such village, place or market.[113] If any person contravenes any of the provisions of this Regulations or any Rule made under this Regulation he shall be liable to a fine which may extend to one thousand rupees or with simple imprisionment which may extend to three months.[114]

Thus the TTAADC has enacted the Regulations for control of trading within the TTAADC area which is one of the main objects of the *Sixth Schedule* to the Constitution.

(4) Tripura Tribal Areas Autonomous District (Establishment of Town Committee) Act, 1989

To establish and develop local self-government and to make better provisions for administration of towns into well developed and sufficient units, the District Council has enacted the *Tripura Tribal Areas Autonomous District (Establishment of Town Committee) Act, 1989.*[115] The Act provides that the Executive Committee of the District Council may by notification declare a specified area to be a notified area[116] and declare such area to be a town and may also give a name to such town which shall be under a Town Committee.[117] There shall be established for each notified area a Town Committee and the Town Committee shall consist of not less than nine and not more than fifteen members who shall be elected on the basis of adult suffrage.[118] The elected members of the Town Committee shall hold office for a term of four years.[119] There shall be a Chairman and Vice-Chairman of the Town Committee to be elected by the elected members of the Town Committee from amongst themselves in the manner prescribed in the rules.[120] There shall be a Secretary to the Town Committee who

will be appointed by the District Council.[121] Subject to the control of guidance of the Executive Committee, the Town Committee shall initiate the development schemes for their town area. The Town Committee is the Executive Agency of all minor development for which the District Council may provide funds. They may also receive and recommend the cases of any individual development schemes or grievances to the District Council. The Town Committee may exercise all or any of the following functions:

(a) maintenance of cleanliness and hygienic condition of road and paths within the town and prevention of public nuisance therein;

(b) maintenance of lighting installation within the town;

(c) construction, maintenance and improvement of water supply;

(d) the taking of curative and preventive measures in respect of epidemics;

(e) the opening and regulating of burial and cremation grounds for dead human beings and regulating places for disposal of refuses of the town;

(f) maintenance of records relating to population census of unemployed person, landless persons and other statistics as may be required by the District Council;

(g) construction, maintenance and improvement of communication drains and water ways within the town;

(h) control of grazing grounds, parks, beauty spots and other community property;

(i) the relief of the poor, the sick or the victims of famine, flood or other calamity;

(j) control and maintenance of public building, institutions, and other properties belonging to or vested in the committee or which may be transferred to their management;

(k) regulating the construction of new building or houses or the extension of alteration of existing ones;

(l) control and management of primary education;

(m) enforcement of vaccination and other measures to combat and irradicate diseases and epidemics;

(n) registration of birth and death and maintenance of registers for the purposes;

(o) prevention of cattle epidemics;

(p) promotion of maternity and child welfare;

(q) supplying of local information as may be required by the District Council, the State Government or any other authority through the Executive Committee of the District Council;

(r) planting and maintaining of trees at public places;

(s) construction and maintenance of rest house;

(t) construction and maintenance of libraries, reading rooms, social and cultural clubs or other places or recreation and games;

(u) promotion and popularisation of modern sports and games that tend to promote the progress and welfare of the people;

(v) destruction of rabbits and stray dogs and other dangerous animals;

(w) disposal of unclaimed cattle, horses, goats, buffaloes and other domestic animals;

(x) removal of encroachment on roads, public places and property vested in the Town Committee; and

(y) any other function and powers as may be delegated by the District Council from time to time.[122]

The Town Committee have the power to levy and collect all or any of the following taxes within its jurisdiction :

(a) taxes for maintenance of primary schools;

(b) taxes for maintenance of roads, bridges, path and lane.

The Town Committee have also power to impose and realise all or any of the following fees with its jurisdiction :

(a) fees for the use and for the maintenance of rest house constructed or transferred to Town Committee;

(b) fees for the maintenance of public well, tanks and water supply;

(c) fees for maintenance of lighting installation;

(d) fees for conducting anti-epidemic services and other schemes of social service.[123]

Thus the TTAADC has enacted the abovementioned Act for the establishment of local self-government in towns within the TTAADC area.

(5) Tripura Tribal Areas Autonomous District Council Primary Schools (Language) Regulations, 1992

To regulate, control and prescribe the language and the manner in which Primary Education shall be imparted in the Primary Schools in the Autonomous District, the District Council has enacted Tripura Tribal Areas Autonomous District Council Primary Schools (Language) Regulations, 1992.[124] Regulation 3 provides that the "education in school shall be imparted by the teacher in *Kok Barak*, except a language subject other than *Kok Barak*." However, Regulation 4 further provides that the "alphabets used in Kok Barak language or literature shall be Bengali alphabets and the figures used shall be international figures."

The *Tripura Tribal Areas Autonomous District Council Primary Schools (Language) Regulations, 1992* was passed by the District Council on 9.3.1992. In Regulation 4 of the said Regulations provision was made to introduce *Kok-Barak* in Roman alphabets. But it was felt that the Tribal children of the District Council Areas on completion of their Primary Education shall have to prosecute their further studies in the educational institutions in different parts of the State where medium of institution is in Bengali in most of the institutions and at that stage if the students are well acquainted with the Bengali then it will be easier and advantageous for them to get further education. Therefore, it is proposed that in Kok-Barak

language of literature the alphabets should be Bengali and not Roman and an amendment was made in Regulation 4 to achieve the aforesaid objective.[125] Now the Regulation 4 provides that the alphabets used in Kok Barak language shall be Bengali alphabets.

Thus the Regulation made an attempt to implement the right of the tribals related to language.

(6) Tripura Tribal Areas Autonomous District (Establishment of Village Committee) Act, 1994

The District Council has enacted the *Tripura Tribal Areas Autonomous District (Establishment of Village Committee) Act, 1994*[126] to establish and develop local self-government and to make better provisions for administration of villages into well developed and sufficient unit. The Act provides for Constitution of villages, establishment of village committees, duration of the members of village committees and the power and functions of the Village Committees

(i) Constitution of Village

The Executive Committee of the District Council is to declare any revenue Mouja or part of revenue Mouja or groups of revenue Mouja or part thereof to be a village. This declaration is to made by notification published in the Tripura Gazette.[127]

(ii) Establishment and Composition of Village Committee

A Village Committee is to be established for each village which is to consist of members not having more than nine and not being less than seven as may be determined by the Executive Committee. Reservation is to be made for the Scheduled Tribes and Scheduled Castes in the Village Committees proportionate to their respective population of the area concerned. Not less than the per cent of the members of the Village Committee is to be reserved for women on rational basis. The members is to be elected on the basis of adult suffrage. Every Village Committee shall be body corporate having perpetual succession.[128] The duration of term of office of members of Village Committee is of five years.[129]

(iii) Functions of Village Committee

Under the control and guidance of the Executive Committee of the District Council, the Village Committee are to initiate the

development schemes for their village areas. They are the Executive Agency of all minor development schemes for their village areas for which the District Council may provide funds. They may also receive and recommend the cases of any individual Development Schemes or grievances to the District Council. The Village Committee may exercises all or any of the following functions :

(a) sanitation and conservation of the village areas;

(b) cleaning and maintaining of village roads and paths;

(c) construction, maintenance and improvement of village wells and tanks for the supply of water to the villages for drinking, washing and bathing purposes;

(d) taking of curative and preventive measures of the epidemic disease;

(e) opening and maintenance of burial and cremation grounds for human dead bodies and opening of disposal of animal dead bodies;

(f) to encourage villagers for kitchen gardening and educate them for preparation of organic mannured and the use of chemical fertilisers;

(g) maintenance of records of yearly population census, cattle census, spinning and weaving loom census, landless and unemployed persons census;

(h) encouragement of cattle rearing in Khutti system and establishment of village grazing grounds to control stray cattle;

(i) maintenance and construction of new buildings and houses;

(j) encouragement of maintaining register of birth and death in the villages;

(k) maintenance of children, adult and women education;

(l) construction and maintenance of rest house in the villages;

(m) establishment and maintenance of social and cultural club including reading and recreation room;

(n) popularisation of indigenous sports, folk dance and music and celebration of national days and other festivals;

(o) destruction of stray dogs and disposal of un-claimed cattles;

(p) any other matter which, if the Executive Committee think proper, may be delegated from time to time;

(q) subject to such conditions and modifications as may be made by the Executive Committee, the Village Committee may also perform any of the duties and function as specified in Chapter III of the Part Ii of the Tripura Panchayats Act, 1993.[130]

(iv) Powers of the Village Committee

The Village Committee has the power to levy and collect all or any of the following fees within its jurisdiction :

(a) fees for maintenance of Primary Schools;

(b) fees for maintenance of roads, bridges, paths and land constructed or maintained by it or which may be transferred to it for maintenance.

The Village Committee has also power to impose and realise all or any of the following fees within its jurisdiction :

(a) fees for the use and for the maintenance of rest house constructed or transferred to Village Committee;

(b) fees for the maintenance of public well, tanks, and water supply constructed or transferred to the Village Committee;

(c) fees for the maintenance of lighting installation within the village; and

(d) fees for conducting anti-epidemic services and other schemes of social service meant for the improvement of public health and sanitation within village.[131]

Thus, the Act provides provisions for the establishment of Village Committees in villages of the Tripura Tribal Areas Autonomous District where it is expedient to establish and develop local Self-Government. The function of the Village Committees

are similar to Panchayats. Therefore, the Tripura Panchayats Act, 1993 is not applicable to TTAADC area.

(7) Tripura Tribal Area Autonomous District Council Police Act, 1997

To establish and regulate village police and town police in the Tripura Tribal Areas Autonomous District, the District Council has enacted the *Tripura Tribal Area Autonomous District Council Police Act, 1997*.[132] Section 3 of the Act, provides that there shall be a force raised and maintained by the District Council called the District Council Police. The entire District Council Police establishment in the District Council area shall be on Police Force and shall consist of such number of officers and men and shall be constituted in such manner as the Executive Committee prescribe. Section 6 further provides that the following shall be the functions of the District Council Police, namely :

(a) to assist the State Police in the maintenance of law and order, peace and tranquillity in the District;

(b) to give information to the State Police about the particulars of all the persons suspected or accused of any cognisable offence or other anti-state acts, and about the commission of such offences or Acts or about escaped convicts;

(c) to prevent the commission of any cognisable offence;

(d) to protect the property in the District; and

(e) to do other social work.

Thus the TTAADC has enacted above mentioned Acts, Rules and Regulations under the framework of the *Sixth Schedule* to the Constitution, to implement and realise a number of collective rights recognised under international human rights framework. The right related to self-government of tribals are inherent in the Sixth Schedule to the Constitution of India. In elaboration of this right the abovementioned Act, Rules and Regulations have been enacted by which the rights related to land and natural resources, language, culture and educational rights, and right related to self-development can be protected.

(iv) Deficiencies in functioning of the Tripura Tribal Areas Autonomous District Council under the Sixth Schedule to the Constitution

As mentioned above the Tripura Tribal Areas Autonomous District Council (TTAADC) under the *Sixth Schedule* to the Constitution performing administrative as well as legislative functions for the realisation of the rights of tribals. During all these years, the TTAADC has, however, not been able to live up to the people's expectations. In general, certain deficiencies have been noticed in the functioning of the TTAADC. One of the main objects of the *Sixth Schedule* is to protect the culture and social customs of the tribals and in this respect the *Sixth Schedule* has vested legislative power to the District Council to enact laws on tribal culture and custom. The TTAADC have, however, not been able to enact any of the customary laws relating to inheritance of property, marriage, custom etc. Under the *Sixth Schedule* there is clear provision empowering the District Council to constitute District Council Courts (village courts) for the trial of suits and cases between parties all of whom belonging to Scheduled Tribes, but no such courts are being established so far by the TTAADC. Hence, all cases are coming before the regular magistrate courts. The net result is that at the present time, there is no statutory body either in the form of *Naya Panchayat* or in the form of village authority to administer justice in villages. To establish and develop local Self-government the TTAADC has enacted the *TTAADC (Establishment of Twon Committee Act, 1989* and *TTAADC (Establishment of Village Committee) Act, 1994*, but general election has not been held so far for the Constitution of Town and Village Committees. Still the matter is in the Gauhati High Court for the delimitation of the boundaries of the Autonomous District.

The TTAADC have also failed to establish healthy conventions in performance of their functions. There has been no effort to follow healthy Parliamentary practices in the legislative field and the control of the legislative wing over the executive wing is almost non-existent. In the discharge of executive functions after several years of working, there has been no perceptiable improvement in implementation of projects. No effort has been made by them to mobilise additional revenue by developing financial resources for undertaking development activities. There

is also inadequate coordination between their official departments and political components. In exercise of his powers,[133] the Governor had framed Rules, called, TTAADC (Constitution and Election) Rules, 1985, which broadly covered (i) composition of the Councils, qualifications of members and matters about staff; (ii) electoral matters, and matters allied to holding of elections, and (iii) conduct and procedure of business. The various District Councils[134] have as they have the power to do so under sub-paragraph 7 of paragraph 2, amended these Rules from time to time. As a result the Rules concerning the Constitution and election of the District Council varies from each other. There is no any common set of rules to all of them covering the framework of the District Councils. Besides these deficiencies, serious difficulties have been experienced in the functioning of the District Councils during the last few years. In the following paragraphs an attempt has been made to relate the defects which have been noticed in the legal framework under which the TTAADC has been functioning :

(a) Nominations and de-nominations

After amendment by the Assam Reorganisation Act of 1969, the Sixth Schedule[135] provides that the total membership of a District Council will not exceed 30 of whom not more than 4 shall be nominated by the Governor. The nominated members hold office at the pleasure of the Governor.[136]

The actual composition of the District Council in Tripura, Assam and Meghalaya is set out below (*see* Table 5.5).

Table 5.5 : Composition of the District Councils in Tripura, Assam and Meghalaya

District Councils	*No. of members*		
	Elected	*Nominated*	*Total*
1	2	3	4
Tripura			
Tripura Tribal Areas	28	2	30
Assam			
Karbi Anglong	26	4	30

1	2	3	4
North Cachar	23	4	27
Meghalaya			
Khasi Hills	29	1	30
Garo Hills	29	1	30
Jaintia Hills	16	3	19

It may be noted that while the Tripura Tribal Areas Autonomous District Council with 30 members of whom 28 are elected and 2 are nominated, the Khasi Hills and Garo Hills District Councils each with 30 members have only 1 nominated member, the Jaintia Hills District Council have 3 nominated members in a total membership of 19. Each of the District Council in Assam has 4 nominated members. There are certain points which need consideration in the matter of nomination and de-nomination. First, nomination must serve a recognisable public purpose. In other words, it should spell out from which class of people the member is to be nominated (that is from minority, women or those with some expertise). Second, the number of nominated members in the House should be small so that, generally, they should not be able to affect formation of the Executive Committee which should be only on the basis of comparative strength of the elected members. It may be better to have only one nominated member in each District Council, who should not have the power to vote on a motion of no confidence or confidence moved in the House. Third, the power to de-nominate a nominated member which has beer. legally upheld by the Gauhati High Court,[137] and which has led to the use of this power on partisan political considerations, should be abrogated. It should be specifically provided that a nominated member shall hold office for the whole term of that House, that is, till the next general election to the Council. Finally, some District Councils have provided in the rules that the Governor will nominate the member on the recommendation of the District Council. This has effect of limiting the discretion.[138] The Schedule itself may have a provision prohibiting District Councils from legislating on the matter of nomination and on the term of office of a nominated member. In fact it should have a provision excluding from the legislative powers of the Council any matter

provided for in the Schedule itself. This would only make explicit what is already implicit.

(b) Dissolution and Assumption of Powers and Functions of District Council by Governor

The *Sixth Schedule* to the Constitution empowers the Governor to take over all or any of the powers and functions of a District Council for a certain period.[139] But he can prematurely dissolve a District Council only on receipt of the report of a Commission appointed under the Schedule.[140] This is an elaborate process. Besides this, the political instability at the State level generally affects stability of a District Council too. The District Councils functioned with a measure of stability till the early seventies. Thereafter, they have been seriously affected by political instability and defections. The Governor should have the power to dissolve a council prematurely and have fresh elections to restore stability when it is lost as a result of defences, etc. The Schedule[141] needs to be suitability amended for this purpose.

(c) Anti-defection measures

In view of the political opportunism displayed by members of a District Council in the recent past, anti-defection legislation may be useful. But at present even if the Council would like to legislate on this matter, it does not appear to have the power to do so.

The *Sixth Schedule*[142] gives powers to frame rules regarding qualifications for being elected at elections as a member of a District Council and any other matter relating to and connected with the election or nomination to such Council. Here the word "qualifications" has been used. In contrast, while Articles 84 and 173 of the Constitution lay down qualifications for membership of Parliament and State Legislatures, Articles 101-102 and 190-191 prescribe disqualifications for such membership. In the absence of specific power in the Schedule,[143] to make rules prescribing disqualifications for members, it is doubtful whether a District Council can legislate to disqualify a defaulting member from contesting as members. A suitable amendment may give councils the power to do so, even though it is not certain that the power would be used.

(d) Other Miscellaneous Provisions

(1) Audit of District Council Fund

Under the *Sixth Schedule*,[144] a District Council is authorised to maintain a District Fund, and all moneys received by the Council are to be credited to the Fund. The accounts of the District Council are under the audit control of the Comptroller and Auditor General.[145] This has not been given effect to as the Governor, i.e., the State Government is to make rules for management of the District Fund[146] and these Rules have not yet been framed in most of the cases. It may be added here that till such time as the Rules are framed, a simple set of Rules, framed by the Comptroller and Auditor General, shall be used. A provision may be added in this paragraph that the accounts of the District Councils can also be audited by an agency of the State Government, viz., the examiner of local accounts.

(2) Structure of District Council

At present the District Councils have a framework similar to that of the State or the Union. They have the (i) legislative, and (ii) executive wings. But in actual functioning, the control and supervision of the legislative wing over the executive wing has been hardly noticeable. It has been noticed that the Chairman of the District Councils have not shown the restriction and balance normally displayed by speakers of the Lok Sabha or State Assemblies. The volume of legislative or parliamentary business transacted by the Councils also has not been so heavy as justify a separate office of the Chairman with his own staff.

It is not considered necessary to have separately a Chairman of the District Council and an Executive Committee under a Chief Executive Member. The Executive Committee exercises all powers of the District Council. The Chairman summons and prorogues the House and presides over its meetings. His functions may also be performed by the Chief Executive Member, as is the case in a Municipality, University Executive bodies and the *Panchayati Raj* institutions. It is also to be noted in this context that the *Sixth Schedule* itself has nothing specific to say in this matter, one way or the other; these offices and their functions were prescribed in the Constitution of District Council Rules. Some of the political

problems the District Councils faced may be resolved by merging these two offices. This could easily be done if the basic structure of the Council is made clear in the Sixth Schedule itself. This would also result in economy in the administration.

(3) Powers and Functions of Chiefs and Headmen

Chiefs and Headmen are the customary Chiefs in the village or of a tribal clan. The District Councils have been given power[147] to make laws in relation to appointment or succession of Chiefs or Headmen. But the Councils have no powers to regulate their powers and functions. It may be better if the District Councils are entrusted with this power so that these powerful local functionaries can be made to play an effective role in their various activities. The District Councils should not have the power to abrogate any of the powers or functions they customarily enjoy or have to perform.

(4) Power to Collect Royalties, Fees etc.

The District Council has been given the power[148] to levy and collect taxes on certain items. But it has no power to collect royalities or fees even concerning such subjects which are within the legislative and administrative competence of the District Council under the Schedule. This power should be given.[149]

(5) Management of Primary Education, Forests and Enforcement of District Council Rules and Regulations

Even in other spheres, functioning of the District Councils has not been satisfactory. For example, in Meghalaya, management of primary education had to be taken over by the Governor,[150] because of their gross mismanagement of this sector. They have not been able to protect common lands or codify any of the social customs, laws, rules, regulations are hardly enforced effectively. There has also been mismanagement of forests as a result of which they have become depleted. These defects could be removed by toning up functioning of the District Councils. However, there are other systemic deficiencies in their functioning, e.g., there is no provision either in the Sixth Schedule or Police Act enabling them to requisition help of the regular police force for such task as, (i) realisation of arrears of taxes; or (ii) securing appearance of culprits in a Village Court. As such, District Councils often fail to

enforce their law. A suitable legal provision in the matter is considered necessary.

(6) Power of Central Government to have Enquiries made into working of Sixth Schedule or any particular aspect of the Schedule

The Governor has the power[151] to appoint a Commission to enquire into, (i) the administration of District Council, or (ii) any particular matter specified by him relating to administration of autonomous districts in the State. The Central Government has not been given any power to have, the working of the schemes included in the Sixth Schedule, examined. If it is not working satisfactorily it would be for the Central Government to remove the deficiencies by amending the *Sixth Schedule*. It is worth considering to such a provision may be included in the Schedule itself.

It emerges from the foregoing discussion that under the new political process the Tripura Tribal Areas Autonomous District Council have been established for the protection of the tribals and realisation of their rights. The Tripura Tribal Areas Autonomous District Council under the Sixth Schedule to the Constitution have been in existence for last 14 years. The main purpose for which the District Council was set up was to protect : (i) interests of tribal population residing in this area from exploitation by people of the plains, (ii) protect tribal lands, (iii) protect tribal culture, (iv) develop tribal language and education, (v) overall development of tribals by their own means, and (vi) preserve tribal institutions, which it was thought, might not be done by a legislature dominated by the plains people. The Tripura Tribal Areas Autonomous District Council is the model of tribal Self-Governance by which they can realise their rights. The objective behind setting up of the District Council is to hand over certain administrative and legislative authority to the Council in order that it may devote concerted attention to all aspects of educational, social, cultural and economic improvement of the tribal people. During all these years, the council have, however, not been able to live up to the people's expectations.

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4. *See*,. K.D. Menon. *Tripura District Gazetteers*. Department of Education, Government of Tripura, Agartala (1975) at p. 77.

5. Ibid., at pp. 94-95.

6. Alexander Mackenzie. *The North-East Frontier of India*. Mittal Publications, New Delhi, 1981 at pp. 271-72.

7. *See*, K.D. Menon. *Tripura District Gazetteers*. op. cit. at p. 103.

8. Ibid., at pp. 110-111.

9. For a relatively detailed account as well as chronology of events, *see*, *Tripura's Ties with Tagore*, Directorate of Education, Government of Tripura, Agartala (1969).

10. The Tripura Merger Agreement, 1949. *see*, *White Paper on Indian States*, Ministry of States, Government of India, New Delhi (1950).

11. (81 of 1971) Section 9 (w.e.f. 21.1.1972). Territories which immediately before the commencement of this constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.

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16. K.D. Menon. Tripura District Gazetteers. op. cit., pp. 186-205.

17. Ibid., at p. 141.

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24. Ibid., at p. 118.

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31. K.D. Menon, Tripura District Gazetteers. op. cit. at p. 117.

32. Ibid., 118.

33. Proclamation made by Kanchanprava Devi, Regent Maharani, dated November 11, 1947.

34. The Tripura Merger Agreement, 1949, op. cit.

35. Tripura State Gazette (Extraordinary Issue) October 15, 1949 at p. 4.

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62. Sections 2(h) and 3(1) read with Schedule-I of the *Tripura Tribal Areas Autonomous District Council Act, 1979.*

63. Section 2(a) of the Act provides "Autonomous District" means the territory comprising the tribal areas specified in the first Schedule appended to this Act and shall not mean a separate district or a revenue district.

64. Ibid., Section 4(1).

65. Ibid., Section 4(2).

66. Ibid., Section 5.

67. Ibid., Section 7.

68. Ibid., Section 20.

69. Ibid., Section 26(1).

70. Ibid., Section 27(1).

71. Ibid., Section 29(1).

72. Ibid., Section 30(1 and 2).

73. Ibid., Section 30(3).

74. Ibid., Section 30(5).

75. Ibid., Section 31.

76. Ibid., Sections 32 and 35.

77. Ibid., Section 36.

78. Ibid., Section 41.

79. For the Tripura riots, *see*, Ranajay Karlekar, "The Tripura Riots, 1980: Problems of Marxist Strategy," *EPW* 20 (1985): 1427-1432; Special Correspondent, "Tripura: Tackling Terrorism Politically," *EPW*, 19 (1984): 1650-52.

80. *see*, TTAADC, *Three Years of Work 1982-85*, Agartala (1985) at p. 7.

81. The Constitution (Forty-Ninth Amendment) Act, 1984. Received the assent of the President on September 11, 1984 and published in the Gazzette of India, Extra II, Section 1, dated September 11, 1984, pp. 1-3.

82. Prefatory Note - Statement of Objects and Reasons. Ibid.

83. Tripura Act No. 2 of 1985. District Council constituted under the Tripura State Act No. 12 of 1979 was dissolved on 31.3.1985 and the Tripura Tribal Areas Autonomous District Council under the *Sixth Schedule* to the Constitution of India, came into being on 1.4.1985.

84. *see*, Appendix-I of the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985.

85. Ibid., Rule 6.

86. Ibid., Rules 10, 154(4) to 163(D)

87. Ibid., Rule 199.

88. Ibid., Rules 200-201.

89. TTAADC. *On the March*, Khumulwng, Tripura (1994) at pp. 1-6. *see also*, TTAADC. *Structure and Function : Tripura Tribal Areas Autonomous District Council Constituted under the Sixth Schedule to the Constitution*. Khumulwng, Tripura (1986).

90. For the general information of the achievements of the TTAADC, *see generally*, TTAADC. *Two Years of Advancement*. Agartala (1997); TTAADC. *On the March*. Khumulwng, Agartala (1993); TTAADC. *At a Glance: Tripura Tribal Areas Autonomous District Council*, Agartala (1998).

91. For the text of the Regulation, *see*, TTAADC, *Compendium of Acts and Rules of TTAADC*, Khumulwng, West Tripura (June, 1988) pp. 166-177.

92. Sections 4 and 6 of the Regulation.

93. Ibid., Section 7.

94. Ibid., Section 9.

95. Ibid., Section 11.

96. Passed on lst August 1988 and received assent of the Governor of Tripura on 30.4.1990.

97. *see*, Rule 3 read with First Schedule to the Tripura Tribal Areas Autonomous District Council Administration Rules, 1988.

98. Ibid., Rules 4 and 5.

99. Ibid., Rule 6.

100. Ibid., Rules 20 and 22.

101. Ibid., Rule 27.

102. Ibid., Rule 28.

103. Ibid., Rule 29.

104. Ibid., Rules 33-34.

105. Ibid., Rule 37.

106. Ibid., Rule 38.

107. Ibid., Rule 46.

108. *see*, Extraordinary Issue of Tripura Gazette, September 1, 1990.

109. Section 3 of the TTAADC (Licensing and Control) Regulations, 1989.

110. Ibid., Section 6.

111. Ibid., Section 7.

112. Ibid., Section 8.

113. Ibid., Section 15.

114. Ibid., Section 16.

115. *see*, Extraordinary issue of Tripura Gazettee, September 3, 1991.

116. Section 3 of the TTAADC (Establishment of Town Committee) Act, 1989.

117. Ibid., Section 4.

118. Ibid., Section 5.

119. Ibid., Section 7.

120. Ibid., Section 9.

121. Ibid., Section 10.

122. Ibid., Section 13.

123. Ibid., Section 14.

124. Published in the Extraordinary Issue of the Tripura Gazette, Agartala, Monday, october 6, 1997.

125. Statement of Object and Reasons of the TTAADC Primary Schools (Language) Regulations, 1992, *see*, TTAADC, *Compendium of Acts and Rules of TTAADC (1998)* at p. 207.

126. Published in the Extraordinary Issue of Tripura Gazette, April 25, 1994.

127. TTAADC (Establishment of Village Committee) Act, 1994, Section 3.

128. Ibid., Section 4.

129. Ibid., Section 10.

130. Ibid., Section 20.

131. Ibid., Section 21.

132. Published in the Extraordinary Issue of Tripura Gazette, April 16, 1998.

133. Conferred by sub-para 6 of para 2 of the *Sixth Schedule* to the Constitution of India.

134. Under the *Sixth Schedule* to the Constitution of India, there are 9 Autonomous District Councils have been functioning : two are in Assam (1. North Cachar Hills, 2. Karbi Anglong); three are in Meghalaya (1. Khasi Hills, 2. Jaintia Hills); one is in Tripura (Tripura Tribal Areas); and three are in Mizoram (1. Chakma, 2. Mara, 3. Lai).

135. Conferred by Sub-Paragraph 2 of Paragraph 2 of the *Sixth Schedule* to the Constitution of India.

136. Ibid., Sub-Paragraph 6.

137. Satyeswar v, Government of Assam, AIR 1974 Gau. 20.

138. Acting on the advice of his Council of Ministers under the Para 2 of the *Sixth Schedule*.

139. Ibid., para. 16.

140. Ibid., Para 14.

141. Ibid., Para. 16.

142. Ibid., Para 2.

143. Ibid.

144. Ibid., Para. 7.

145. Ibid., Sub-Para. 4 of Para. 7.

146. Ibid.

147. Ibid., Sub-Para. (g) of Para. 3(1).

148. Ibid., Sub-Para. 3 of Para. 7.

149. By suitably amending the Sub-Para. 3 of Para. 8 of the *Sixth Schedule*.

150. Ibid., Sub-Para. 2 of Para. 16.

151. Ibid., Para. 14.

CHAPTER - 6

Concluding Observations

The expression "Indigenous Peoples" is generally used in relation to those aboriginal populations who inhabited a country or a geographic region at the time when people of different cultures or ethnic origins arrived, the new arrivals later on becoming dominant through conquest, occupation, settlement or other means. All over the world, in more than 70 countries, numbering 300 million people, such Indigenous People have, by and large, in common considerable economic backwardness in comparison to the remainder of the population, inequality of opportunity and the survival of anachronistic economic and land tenure systems. The living standard of such peoples in independent countries irrespective of being developed, undeveloped or underdeveloping is, in general, extremely low, and in the great majority of cases is considerably lower than that of the most needy layers of the non-Indigenous population. Such a deplorable condition of Indigenous Peoples has prevented them from fully developing their production and consumption and has contributed to perpetuating their interior social status. The long run implication of such situation, prevalent throughout the world, has been the generation of many twentieth-century conflicts which concerned ethnicity, minority rights, self-determination, participation in government, and control over economic development. Although in the past, States, their governments and majority population of non-Indigenous Peoples in the States have been apathetic and unconcerned to the development economic, social, cultural and political - of the Indigenous Peoples, in recent years, during the last three decades, much more attention, has been paid to the Indigenous Peoples and to their rights not only at international

level but also at national level in many countries by means of adopting declarations and conventions at international level and introducing/taking appropriate legal measures at national level. India - being a member of the United Nations and a staunch believer in upholding the human dignity, equality, brotherhood and welfare of all the people since time immemorial, following the principle of *Sarvajana Hitaya Bahujana Sukhaya*, has not lagged behind in the endeavours made at international level with regard to the upliftment of Indigenous Peoples. Without adopting the expression "Indigenous Peoples" for the aboriginal population residing in different parts of India, the framers of the Constitution of independent India included specific constitutional provisions for "Scheduled Tribes" providing for a new Political Process for the realisation of the rights and fulfilling the aspirations of the Scheduled Tribes who have been called as Indigenous Peoples by World Bank. The new Political Process . dopted by the Constitution has been in operation in some States since the date of the commencement of the Constitution and its operation has gradually been extended to other States from time to time - the State of Tripura has been the last State. In the backdrop of the evolution, development and recognition of various rights of Indigenous Peoples at international arena, the present study was undertaken with a view to examine in depth the 'Role and Impact of New Political Process' adopted by India for the purposes of the realisation of the rights of Indigenous Peoples - known as Scheduled Tribes in India - in general; and the State of Tripura was chosen for the case study. Keeping in view of this broad objective, efforts have been made in the preceding Chapters 2, 3, 4 and 5 of this study to discuss the various aspects and issues pertaining to the realisation of the rights of Indigenous Peoples and to find out the extent to which the Political Process adopted by India has been successful in fulfilling the needs and aspirations particularly with regard to the realisation of the rights of the Indigenous Peoples of India - the Scheduled Tribes and also in meeting out the international norms, requirements and aspirations concerning Indigenous Peoples.

In this endeavour, the focal questions which have been examined and discussed, in addition to various other questions, directly or indirectly related to focal ones, in the different preceding chapters may be outlind thus :

1. What should be the accepted definitions of the terms "Indigenous" and "Peoples" - Can Indigenous communities be regarded as Peoples - Can the status of Indigenous Peoples be attributed to Scheduled Tribes of India?

2. When and how have the rights of Indigenous Peoples been evolved, developed and recognised at international level - What are the various rights which have been recognised at international level and what are the nature and extent of these rights, in general, and of the right related to land and resources, right related to culture, language and education, right related to development, and right related to Self-determination in the form of autonomy or self-government, in particular?

3. What had been the system of governance and administration of tribals during Pre-British period - What developments had taken place with regard to the evolution of the political process for the realisation of the rights of tribals during British India and during the period of Constitution making, and - What has been the special Political Process adopted under the Constitution of India for the realisation of the rights of tribals?

4. What had been the Political Process adopted in the State of Tripura prior to the introduction of new Political Process for the realisation of the rights of Tribals in Tripura - What has been the form through which the new Political Process has been initiated in the State of Tripura - How has this new Process been functioning, and To what extent has the new process succeeded or failed in achieving the objectives of its initiation towards the realisation of the rights of tribals in Tripura and fulfilling their aspirations? Further, are there any deficiencies or shortcomings in the process itself or in the functioning of the system provided by the process?

The above-mentioned major issues form the basis of the subject matters discussed in Chapters 2, 3, 4 and 5 respectively. The various aspects of these issues, alongwith other issues related thereto, have been thoroughly examined, discussed and analysed, from the angles of international and national laws, and necessary suggestions have been made to overcome the shortcomings or

clarify the existing legal position at both the levels - international and national. In the pages to follow, the discussions contained in the various Chapters and the main findings arrived therein alongwith the suggestions/recommendations are given in the summarised form for presenting a bird's eye view of the entire work and highlighting the present state of affairs at Global level and in India with regard to the realisation of the various rights of Indigenous Peoples :

A. Definition of the terms "Indigenous" and "Peoples" and Declaration of "Scheduled Tribes" of India as Indigenous Peoples

From the discussions contained in Chapter 2, it emerges that three types of definitions are used at international level with regard to the term "Indigenous", viz., ILO definition, UN definition and World Bank's definition. ILO *Convention No. 107* of 1957 adopted the first legal definition of the term "Indigenous". According to this definition "Indigenous" are tribal or semi-tribal populations of a special category who inhabit a particular geographic region and have a specific historical experience. Now ILO *Convention No. 107*, is revised by *Convention No. 169* of 1989. The new *Convention No. 169* have adopted a modified definition. However, the definition contained in the *Convention No. 107* has not been abrogated but is supplanted by the definition adopted in *Convention No. 169*. According to the new definition "Indigenous" Peoples are those who have been affected (obviously in a non-dominant way) during the establishment of the present State boundaries and who retain some of their economic, cultural and political institutions. The second type of definition is used in the *UN Study on Discrimination against Indigenous Populations*. In order to carry out the UN study the *Special Rapporteur* developed a definition which is known as *Working definition*. According to the *Working definition*, "Indigenous" are those original inhabitant of a territory who for the historical reasons reduced to a non-dominant or isolated or marginal population and, who are socially and culturally distinct from other segments of the predominant population. After the completion of the study, the *Special Rapporteur* recommended a comprehensive definition in the "Conclusions, Proposals and Recommendations" of the study for the purpose of international action. Subsequently this definition was accepted as

an *Operational definition* by UN Human Rights *Working Group on Indigenous Populations* in 1982. According to this definition "Indigenous" are those who having a historical continuity consider themselves ethnically distinct from other sections of the society and are non-dominant group. For identification of Indigenous Peoples, the definition includes some factors such as occupation of ancestral lands, common ancestry, dress, means of livelihood, life-style, language and residence in certain geographic region. This definition for the first time included the subjective criteria (such as self-identification as indigenous) and acceptance by the group concerned with the definition. The third type of definition is contained in the *World Bank's Operative Directive* 4.20 of September 1991. According to this definition, "Indigenous" Peoples are those social groups who have a social and cultural identity distinct from the dominant society. For the identification of Indigenous Peoples, the definition also provides some criteria, such as, ancestry, language and customary social institution. Thus, we find that although a number of efforts have been made to clarify the term "Indigenous", still a commonly accepted definition of the term "Indigenous" is not available. The concept "Indigenous" is a developing one. However, the analysis of all definitions contained in principal studies, guidelines and legal instruments reveal that according to the current understanding a number of criteria have been identified to determine "Indigenousness". These include consideration of both objective and subjective elements such as ancestry, traditional lands, historical continuity, distinctive cultural aspects including religion, tribal organisation, community membership, dress and livelihood, language, group consciousness (those who feel themselves to be indigenous), residence in certain parts of the country and accepted by indigenous community.

As it has been difficult to define the term "Indigenous", it has thus far proved impossible to arrive at a commonly accepted definition of the term "Peoples". The term "Peoples" is widely used in international law, but is still not clearly defined. However, the mostly very pronounced sense of belonging together indicates that "a people" is a social entity which has a clear identity and its own characteristics linked by one or more specific common features such as common culture, language, religion or common history, economic and social life, etc. The use of the term "Peoples" for Indigenous communities are problematic. The problem results

mainly from the fact that the use of the term "Peoples" has considerable consequences in international law as "Peoples" have the right of self-determination. However, now there is a more marked tendency to favour the term "Indigenous Peoples" over the term "Indigenous Populations". Therefore, ILO *Convention No. 169* used the term "Indigenous Peoples" with a condition that the use of the term "Peoples" did not involve the recognition of the right of self-determination. The *Draft UN Declaration on the Rights of Indigenous Peoples* uses the term "Indigenous Peoples" to represent indigenous groups or communities. Thus indigenous communities are to be regarded as "Indigenous Peoples".

In India the term "Indigenous Peoples" has not been recognised in the manner it has been considered in international law. The Constitution of India, however, introduced the term "Scheduled Tribes" and empowered the President of India to specify the tribals or tribal communities in India and, the President has continuously exercised his power vested in him in specifying and identifying various tribal communities in India since 1950 till date. As a result, a number of Constitutional Orders have been issued which have identified various communities as tribals. In this connection certain criteria have been adopted for identifying tribes such as those who have an ethnic identity, who have retain their traditional cultural identity, who have a distinct language or dialect for their own, who are economically backward and are living in seclusion governed by their own social norms and largely having a self-contained economy. These criteria for identifying a "Scheduled Tribe" in India fall very well within the scope of current understanding of the term "Indigenous Peoples" at international level. The *Indian Council of Indigenous and Tribal Peoples* (ICIPT), which was formed in 1987 and affiliated to the *World Council of Indigenous Peoples*, an organisation which received consultative status with the *United Nations Economic and Social Council*, organised a symposium at New Delhi in April 1992, entitled, "Who are the Indigenous Peoples of India?" In the symposium, the ICIPT admitted the fact that the "Scheduled Tribes" (*Adivasis*) of India fall very well under the UN definition of Indigenous Peoples. Moreover, India is a party to ILO *Convention No. 107* of 1957 on Indigenous and Tribal Populations. India participated in the drafting of the convention and supported the document at the early stages when it only used the term "Indigenous". India had also

made an official acknowledgement at the international level by becoming one of the first signatories of the Convention and ratifying the Convention in 1958. Furthermore, in 1991 the World Bank has declared that in India the term "Indigenous Peoples" means "Scheduled Tribes". Thus, it emerges that the term "Indigenous Peoples" used at the international level can very well be attributed to the "Scheduled Tribes" of India. It may, therefore, be safely recommended that the Government of India should declare the "Scheduled Tribes" of India as Indigenous Peopls. The declaration will satisfy the aspiration of the Scheduled Tribes of India.

B. Evolution, Development and Recognition of the Rights of Indigenous Peoples at International Level - Their Types, Nature and Extent

With regard to the evolution, development and recognition of the rights of Indigenous Peoples at international level, it emerges from the discussions contained in Chapter 3, that at the international level the development of the rights of Indigenous Peoples had started since the time of *League of Nations*. As early as 1921, the ILO carried out a series of studies on indigenous works. In 1926, it established a Committee of Experts on Native Labour, whose work led to the adoption of a number of conventions and recommendations concerning forced labour and recruitment practices of indigenous groups. This encouraged Member States to extend legislative provisions to all segments of their population, including indigenous communities, and called for improved education, vocational training, social security, and protection in the field of labour for Indigenous Peoples.

The major developments of international concern regarding the rights of Indigenous Peoples took place within the human rights frame. This developments have occurred in three stages. The first embodiment of the mid-twentieth-century development of the international human rights programme in the specific context of Indigenous Peoples is *International Labour Organisation* (ILO) *Convention No. 107* of 1957 and the accompanying *Recommendation No. 104*. The Convention came into face in 1958 and altogether 27 States have ratified the Convention; India ratified the convention in 1958. While identifying the members of Indigenous groups who

were in need of special measures for the protection of their human rights, *Convention No. 107* reflected the premise of assimilation operative among dominant political elements in national and international circles at the time of the convention's adoption. The universe of values that promoted the emancipation of colonial territories during the middle part of this century simultaneously promoted the assimilation of members of culturally distinctive indigenous groups into dominant political and social orders that engulfed them. The thrust of *Convention No. 107* of 1957, accordingly, has been to promote improved social and economic conditions for Indigenous Peoples generally, but within a perceptual scheme that does not seem to envisage a place in the long term for robust, politically significant cultural and associational patterns of indigenous groups. *Convention No. 107* is framed in terms of members of Indigenous Populations and their rights as equals within the large society. Indigenous Peoples or groups as such are made beneficiaries of rights or protections. *Convention No. 107*, however, reflected the common view of 1940s and 1950s. After the adoption of the *Convention No. 107*, the World has changed and the Convention has been overtaken by events, especially decolonization. Hence, Indigenous Peoples increasingly taking charge of the international human rights agenda as it concerned them, *Convention No. 107* of 1957 came to be regarded as anachronistic. In 1986 ILO's Governing body, under the pressure from Indigenous Non-governmental Organisations agreed to revise *Convention No. 107* and ultimately in 1989, ILO adopted a revised Convention on Indigenous and Tribal Peoples - *Convention No. 169* of 1989. This Convention came into force in 1991 with the ratifications by Norway and Maxico. Uptil now nine States have ratified the convention; India has yet to ratify the Convention.

The adoption of the ILO *Convention No. 169* of 1989 may be said to be the second stage of development of the rights of Indigenous Peoples. ILO *Convention No. 169* is international law's most concrete manifestation of the growing responsiveness to Indigenous Peoples' demands. The basic theme of *Convention No. 169* is indicated by the convention's preamble, which recognises the aspirations of Indigenous Peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the State in which they live. Upon this

promise, the Convention includes provisions advancing indigenous cultural integrity, land and resource rights, and nondiscrimination in social welfare spheres, and it generally enjoins the Member States to respect Indigenous Peoples' aspirations in all decisions affecting them. Upon the adoption of *Convention No. 169* by the International Labour Conference in 1989, several representatives of Indigenous Peoples expressed dissatisfaction with the language used in *Convention No. 169*, viewing it as not sufficiently constraining of government conduct in relation to Indigenous Peoples' concerns. Other representives of Indgenous Peoples expressed support for the *Convention No. 169* and for the efforts of the ILO to promote and protect Indigenous rights. They endorsed ratification by all States which have Indigenous Peoples within their borders and felt that respect for the Convention's provisions would improve the situation of Indigenous Peoples in most countries. Whatever its shortcomings may be *Convention No. 169* succeeds in affirming the value of indigenous communities and cultures, and in setting forth a series of basic precepts in that regard. Although the Convention contains few absolute rules, it fixes goals, priorities and minimal rights that follow generally from Indigenous Peoples' articulated demands. ILO *Convention No. 169* may be said to be significant to this extent that it creates treaty obligations among ratifying States in line with current trends in thinking prompted by Indigenous Peoples' demands. The Convention is further meaningful as part of a large body of developments that can be understood as giving rise to new customary international law with the same normative thrust. The Government of India should ratify ILO *Convention No. 169* as early as possible.

The third stage of development of the rights of Indigenous Peoples has started with the preparation of the *Draft United Nations Declaration on the Rights of Indigenous Peoples*. The draft a dramatic manifestation of the mobilisation of social forces through the human rights frame of the contemporary international system. The draft had been prepared by the *UN Working Group on Indigenous Populations* and was submitted to the UN *Commission on Human Rights* for consideration. Through the process of drafting a declaration, the *Working Group on Indigenous Populations* engaged States, Indigenous Peoples, and others in an extended multilateral dialogue on the specific content of norms concerning Indigenous

Peoples and their rights. By welcoming commentary and proposals by Indigenous Peoples for over a decade, the Working Group provided an important means for Indigenous Peoples to promote their own conceptions about their rights within the international arena. As the drafting process proceeded in the Group, more and more governments responded with their respective pronouncements on the content of Indigenous Peoples' rights. The draft stands in its own right as an authoritative statement of norms concerning Indigenous Peoples on the basis of generally applicable human rights principles; and it is also a manifestation of the movement in a corresponding consensual nexus of opinion on the subject among relevant actors. The extensive deliberations leading to the draft declaration, in which Indigenous Peoples themselves played a leading role, enhances the authoritativeness and legitimacy of the draft. The draft is an emergent international law, goes beyond the *Convention No. 169* especially in its bold statements in areas of land and resource rights, and rights of political autonomy. It is clear that all are not satisfied with all aspects of the draft declaration. Some Indigenous Peoples' representatives have criticised the draft for not going far enough, while governments typically have held that it goes too far. Nonetheless, a new common ground of opinion existed among experts, Indigenous Peoples, and governments about Indigenous Peoples' rights and attendant standards of government behaviour, and that widening common ground is in some measure reflected in the draft.

The above mentioned developments regarding the rights of Indigenous Peoples are the result of continuous efforts of Non-Governmental Organisations of Indigenous Peoples. The Non-Governmental Organisations made statements without reference to any treaty obligations which contributed to a new international consensus on Indigenous Peoples' rights. Evident in each of these statements is the implied acceptance of certain normative precepts grounded in general human rights principles. And because the developments reported in these statements are independently verifiable, despite continuing problems not reflected in the government accounts, it is evident that the underlying standards are in fact guiding or influencing behaviour. The specific contours of these norms are still evolving and remain somewhat ambiguous. Yet the core elements of a new generation of internationally operative norms are confirmed and reflected in the extensive

multilateral dialogue and processes of decision focussed on Indigenous Peoples and their rights.

The new and emergent international law on the rights of Indigenous Peoples, which includes ILO *Convention No. 169* and *Draft UN Declaration of Rights of Indigenous Peoples*, is a manifestation of social movement through human rights frame of the contemporary international system. Indigenous Peoples themselves have been at the helm of a movement that has challenged State centered structures and precepts which have continued within international law and global organisation. This movement, although fraught with tension, has resulted into a number of internationally recognised rights of Indigenous Peoples'. The general contours of these rights are : (a) rights of Indigenous Peoples related to land and resources, (b) rights of Indigenous Peoples related to culture, language and education, (c) right of Indigenous Peoples related to Development, and (d) right of Indigenous Peoples related to Self-determination, Autonomy and Self-government.

Regarding the *right related to land and resources*, it is submitted that the Inter-American Commission on Human Rights and the UN Human Rights Committee acknowledged the importance of lands and resources to the survival of Indigenous Peoples. That understanding is a widely accepted principle of contemporary international concern over Indigenous Peoples. It follows from Indigenous Peoples' articulated ideas of communal stewardship over land and deeply felt spiritual and emotional nexus with the earth and its fruits. Indigenous Peoples, furthermore, typically have looked to a secure land and natural resource base to ensure the economic viability and development of their communities. In contemporary international law, modern notions of cultural integrity and self-determination join property precepts in the affirmation of *sui generis* Indigenous land and resource rights, as evident in ILO *Convention No. 169*. The land and resource rights provisions of *Convention No. 169* are framed with a collective character, and they include a combination of possessory, use and management rights. The concept of Indigenous territories embraced by the Convention is deemed to cover the total environment of the areas which the peoples concerned occupy or otherwise use. The essential aspects of the provisions of the

Convention No. 169 related to land rights are strongly rooted in an expanding nexus of international opinion and practice. In responding to a questionnaire circulated by the International Labour Office in preparation for drafting the new Convention, governments overwhelmingly favoured strengthening the land rights provisions of ILO *Convention No. 107* of 1957, including governments not parties to that Convention. Although *Convention No. 107* is generally regarded as flawed, it contains a recognition of Indigenous land rights that has operated in favour of Indigenous Peoples' demands through the ILO's supervisory machinery. The discussion on the new Convention proceeded on the premise that Indigenous Peoples were to be accorded greater recognition of land rights than they were in *Convention No. 107*. The land rights' provisions of *Convention No. 169* were finalised by a special working group of the Labour Conference Committee (L.C.C.) that developed the text of the Convention, and the L.C.C. approved the provisions by consensus. Government statements to the UN *Working Group on Indigenous Populations* and other international bodies confirm general acceptance of at least the core aspects of the land rights' norms expressed in *Convention No. 169*. The statements tell of worldwide initiatives to secure indigenous possessory and use rights over land and resources and to redress historical claims. The acceptance of Indigenous land and resource rights is further evident in the *Draft United Nations Declaration on the Rights of Indigenous Peoples.*

With regard to second right, i.e., *right related to culture, language and education,* it is submitted that the Indigenous Peoples' interests are based on their traditional land; related to these interests are entitlements of their rights related to culture, language and education. *The International Covenant on Civil and Political Rights, 1966, UNESCO Declaration of the Principles of International and Cultural Cooperation, 1966* and a number of other human rights instruments contain provisions upholding rights of cultural integrity. But the new and emergent international law of Indigenous Peoples upholds the specific right of Indigenous Groups to maintain and freely develop their cultural identities in coexistence with other sectors of humanity. As the international community has come to consider indigenous cultures equal in values to all others, the cultural integrity norm has developed to entitle Indigenous Groups to affirmative measures to remedy the

past understanding of their cultural survival and to guard against continuing threats in this regard. It is not sufficient, therefore, that States simply refrain from concerning assimilation of Indigenous Peoples or abandonment of their cultural practices. ILO *Convention No. 169* provides that - "Governments shall have the responsibility of developing, with participation of peoples concerned, coordinated and systemic action to protect the rights of these peoples and to guarantee respect of their integrity". The *Draft UN Declaration on the Rights of Indigenous Peoples* echoes the requirement of "effective measures" to secure Indigenous culture in its many manifestations. Comments by governments to the Working Group and other international bodies, as well as trends in government initiatives domestically, indicate broad acceptance of the requirement of affirmative action to secure indigenous cultural survival. Thus, in all cases, the operative promise is that of securing the survival and flourishing of Indigenous cultures through mechanisms devised in accordance with the preference of the Indigenous Peoples concerned. The rights of Indigenous Peoples related to language has also been recognised under the customary International law and the new and emergent international law. Article 27 of the *International Covenant on Civil and Political Rights, 1966*, is useful to the Indigenous Peoples for the protection of their language. Article 28 of the ILO *Convention No. 169* specifically recognises the right of Indigenous Peoples related to language. Article 28 imposes the responsibility upon the governments that "children belonging to the peoples concerned..... be taught to read and write in their own indigenous language.....". The *Draft UN Declaration on the Rights of Indigenous Peoples* explicitly recognises the right of Indigenous Peoples related to language. Article 14 of the draft deals with the right of Indigenous Peoples related to language. The right of Indigenous Peoples related to education has also been recognised under the customary international law and new and emergent international law. ILO *Convention No. 107* imposed the responsibility on governments to take measures for education of the Indigenous Peoples on an equal footing with the rest of the national community. ILO *Convention No. 169*, however, made a significant departure from the *Convention No. 107*. *Convention No. 169* provides that education programmes and services for the Indigenous Peoples is to be developed and implemented in co-operation with them to address their special needs. The *Draft UN Declaration on the Rights of Indigenous Peoples*

have included provisions relating to right to education which are already recognised under *Convention No. 169*.

The third *right of Indigenous Peoples which is related to development* is the new dimension of the ongoing human rights issues. The right of Indigenous Peoples related to development has been recognised under customary international law and also under new and emergent international law. In December 1986, the UN General Assembly adopted the *Declaration on the Right to Development*. The Declaration defines the right to development as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised. The greater part of the Declaration is occupied with articulating a series of duties on the part of the right to development through international cooperation and domestic programs. Within the framework of the foregoing precepts, a special rubric of entitlements and corresponding duties has developed with regard to Indigenous Peoples. In response to this phenomena, ILO *Convention No. 169* establishes, as a matter of priority, the improvement of the conditions of life and work and levels of health and education of Indigenous Peoples and it mandates special projects to promote such improvement. The Convention, furthermore, specifies duties on the part of States to ensure the absence of discriminatory practices and effects in areas of employment, vocational training, social security and health, education, and means of communication. The *Draft UN Declaration* follows in the same vein, stating that Indigenous Peoples are entitled to have access to adequate financial and technical assistance from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development. The provisions of *Convention No. 169* and *Draft UN Declaration* referred to above represent a consensus. Although controversy exists about the outer bounds of State obligation to promote indigenous development, a core consensus exists that States are in some measure obligated in this regard.

The last, but not the least, *right relating to Self-determination, Autonomy and Self-government* has been the focal point in all discussions held on the individual and collective human rights of

Indigenous Peoples. The right of self-determination is regarded as a pre-requisite to the full enjoyment of all human rights, and there is a critical connection between the historical denial of indigenous right of self-determination within domestic and international legal systems and racial discrimination. While a number of former colonies have exercised their right of self-determination and independence, there are nearly 300 million of indigenous individuals scattered across the World for whom the colonial structure is not abolished. The principle of self-determination, as enumerated in the two human rights pacts of 1966, have two aspects : *external* aspect of self-determination and *internal* aspect of self-determination. While the first aspect of self-determination entails independence, statehood and secession; the second aspect of the concept refers to a wide variety of autonomous decision making body or self-government-short of full independence. For Indigenous Peoples, there is no immediate prospect of creating independent States because their individual members are small in numbers and their lands have been enclosed within the boundaries of bigger States. In this unique situation, the solution to their problem lies in the promotion and protection of individual and collective human rights within the framework of the existing States by granting Autonomy or Self-government. Although the right of Self-determination of Indigenous Peoples has not been categorically recognised in any international convention, the international consensus appears to favour the recognition of the right in the sense of Autonomy or Self-government. The Autonomy or Self-government for Indigenous Peoples falls within the *internal* aspect of Self-determination. The ILO *Convention No. 169* requires effective means by which Indigenous Peoples can freely participate at all levels of decision making affecting them. The Convention also upholds the right of Indigenous Peoples to retain their own customs and institutions; and it requires that the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected. Although differing in their willingness to accept such a formulation of a right to Autonomy or Self-government, States increasingly have expressed agreement that Indigenous Peoples are entitled to maintain and develop their traditional institutions and to otherwise enjoy Autonomous spheres of governmental or administrative authority appropriate to their circumstances. Hence, Article 31 of the *Draft UN Declaration*

states that Indigenous Peoples, as a specific form of exercising their right to Self-determination, have the right to Autonomy or Self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions. Thus the *internal* Self-determination in the form of Autonomy or Self-government is the overarching political dimension of ongoing Self-determination. In this context, it may be recommended that the two human rights pacts of 1966 on *International Covenants on Economic, Social and Cultural Rights* and on *Civil and Political Rights* should be amended so as include specific provisions on the rights of Indigenous Peoples related to Self-determination. In this connection a proviso should be added to the common Article 1 of the both covenants similar to the Article 31 of the *Draft UN Declaration on the Rights of Indigenous Peoples.*

The problems of the rights of Indigenous Peoples are closely linked with the collective human rights. The promotion and protection of the human rights of Indigenous Peoples seem to be the major challenges for UN human rights activities. To this extent, 1990s could see UN human rights work turning from individual human rights towards collective human rights. In this situations certain rights of Indigenous Peoples have received recognition at international level. These rights are collective human rights related to either land and resources or culture, language and education or development. But the right of *internal* Self-determination in the form of Autonomy or Self-government is the possible form/process for the realisation of the rights of Indigenous Peoples.

C. System of Governance and Administration of Tribals in India During Pre-British Period, British Period and Thereafter as Well as the Emergence of New Political Process for Realisation of the Rights of Tribals in India

It has been noticed during discussion in Chapter 4 that in India, the rights of Indigenous Peoples (i.e., of Tribals) have not been recognised in the form and manner as they have been recognised at international level. However, efforts have been made to protect the rights of tribals. The Constitution of India provides two types of political processes for the realisation of the rights of

tribals under the *Fifth* and *Sixth Schedules* to the Constitution. Even though separate political processes have been recognised under the *Fifth* and *Sixth Schedules* to the Constitution for tribals, the problems of administration of tribal areas were recognised much earlier. During Pre-British period, the tribal people were never fully conquered or subjugated by the Muslim rulers who preferred to make settlements with local non-tribal princes or if expedient, with the tribal chieftains instead of dealing with the tribal people directly. In many areas, they had their own princelings who ruled independently or as vassals of Delhi based kings or local princes. Even where there was no tribal chieftain, the non-tribal rulers found it expedient to deal with their tribal subjects through their chiefs and confined themselves to the collection of their share of levy. They did not interfere with customary laws, tribal life-styles and economic fabrics.

The British government succeeded in isolating the tribal people from rest of the country; on the otherhand, they did not save them from the clutches of money lenders, landholders and contractors. This attitude of British government led to considerable discontent and revolts amongst the tribal people. Hence, the British government revised its isolation policy and adopted a policy of limited isolation and decided to intervene only to maintain law and order and to take legal, protective and executive measures for minimising the exploitation. With these ends in view, the British Parliament enacted a number of Acts, Regulations, etc., and special provisions were made therein for the administration and development of tribal areas. The first important legislation, which recognised that administration in advanced areas of Bengal and Bihar was not suited to tribal areas, was the *Regulation XIII of 1833. The Government of India Act of 1835, Indian Councils Act of 1861, Garo Hills Act of 1869 and Government of India Act of 1870* allowed special laws to be enacted for tribal areas. The main feature of these laws was a simple and elastic form of judicial and administrative procedure. The *Scheduled District Act, 1874* declared tribal areas as *Scheduled Districts*. The word *District* in this enactment corresponded to a specified area and not to the present revenue division. The Act allowed modification of laws in force in other parts of India to suit a particular *Scheduled District*. By this Act, an uniform law was promulgated by the Government of India to embrace all tribal concentrations throughout the country. The

Government of India Act, 1919 declared the tribal areas as *Backward Tracts*. Under this Act, the *Backward Tracts* were determined from time to time and the laws were applied with such restrictions and modifications as were deemed fit. The administrators at the district and *taluka* levels could take final decisions in matters related to law and order and land rights. The *Government of India Act, 1935* divided tribal areas into *"Excluded Areas"* and *"Partially Excluded Areas"*. The point of distinction between an *Excluded Area* and a *Partially Excluded Area* was that while both classes of areas were excluded from the competence of the Provincial and Federal Legislations, the administration of *Excluded Areas* was vested in the Governor acting in his discretion, while administration of the *Partially Excluded Areas* was vested in the Council of Ministers subject, however, to the authority of the Governor exercising his individual judgment. Thus, during the British period, the problems of administration of tribal areas were recognised and a number of protective measures had been introduced for the administration of these areas; common to all these measures was the provision of filtering applicability of Federal or Provincial Legislations.

The special attention was given for *Excluded and Partially Excluded Areas* during Constitution making. The Advisory Committee of the Constituent Assembly appointed two Sub-Committees, the *Sub-Committee on Assam* and the *Sub-Committee on other than Assam*, to prepare schemes for the administration of the *Excluded and Partially Excluded Areas*. Both Sub-Committees recommended separate schemes of administration for their respective tribal areas. *The Sub-Committee on Assam* had recommended that *Autonomous District Councils* could set up in hill districts of Assam with powers of legislation and administration over land, village, forest, local laws, primary education etc. In its report the Committee had taken into consideration three main facts for preparing a separate scheme of administration for tribals of Assam, viz., (i) the distinct social customs and tribal organisations of the different peoples as well as their religious beliefs, (ii) the fear of exploitation by the people of the plains on account of their superior organisation and experience of business, and (iii) the desirability of a of a separate scheme for making suitable financial provisions. The *Sub-Committee on other than Assam* had recommended that the Constitution could provide for the setting up in each Province other

than Assam of a body which could keep the Provincial Government constantly in touch with the needs of the aboriginal tracts in particular and with the welfare of the tribals in general. This body was known as *Tribes Advisory Council*, which could have a strong representation of the tribal element. The *Tribes Advisory Council* could primarily advise the government in regard to the application of laws to the aboriginal tracts. Thus, both Sub-Committees had recommended separate schemes of administration for their respective tribal areas. The reason behind the separate treatment was that the tribal areas of Assam were divided into large districts inhabited by single tribes or fairly homogeneous groups of tribals, and these areas had hitherto been anthropological specimens. But the tribals of any part of India other than Assam had comparatively more assimilated with the rest of the population. The joint report of the two Sub-Committees recommended that the future of the tribal areas laid in the development and not in isolation. They recommended that the responsibility of the tribal areas either in Assam or in other parts of India could be vested on the Government of India and the schemes of development was to be implemented by the State Governments. To meet the costs of schemes of development, separate financial provisions could be adopted by the Government of India. The *Advisory Committee* had accepted all these recommendations and the *Drafting Committee* had incorporated the recommendations of the *Sub-Committee on other than Assam* in the *Fifth Schedule* and the Recommendations of the Sub-Committee on Assam in the *Sixth Schedule* to the draft Constitution. In the Constituent Assembly Debates the draft *Fifth* and *Sixth Schedules* were passed with minor modification.

According to the joint recommendations of the two Sub-Committees, separate financial provision has been incorporated in the Constitution of India. Article 275(1) provides for grants-in-aid from the Union of India to meet the costs of schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration therein. The draft *Fifth* and *Sixth Schedules* were numbered as such to the Constitution. The *Fifth Schedule* provides that the areas predominantly inhabited by tribal people should be known as "Scheduled Areas". Under the *Fifth Schedule* the State under which a Scheduled Area falls, Governor exercises executive

powers but he is vested with authority (a) to modify Central and State laws in their application to them, and (b) to frame regulations for their peace and good government and in particular, for the protection of the rights of tribals in their land, the allotment of waste land and their protection from money-lenders. The *Fifth Schedule* provides for establishing a *Tribes Advisory Council* which is mandatory in States having Scheduled Area. A *Tribes Advisory Council* is to be consisted with not more than twenty members of whom three-fourths members shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. The Governor is required to consult the Council in framing regulations for Scheduled Area. The Council is also expected to be a channel of discussion about the stages in which the laws and rules generally obtaining, should be applied to the tribal area. The Governor is further required to submit an annual report to the President of India.

The *Sixth Schedule* to the Constitution provides a detailed scheme of administration for tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. There are nine tribal areas mentioned in the table appended in the *Sixth Schedule*. In Assam there are two tribal areas (North Chachar and Karbi Anglong), in Meghalaya three (Khasi Hills, Jaintia Hills and Garo Hills), in Tripura one (Tripura Tribal Area) and in Mizoram three (Chakma, Mara and Lai). The tribal areas are to be autonomous districts. For the administration of an autonomous district, there is to be a *District Council*. The *District Council* is to consist of not more than thirty members, out of whom not more than four shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage. The *District Council* for an autonomous district has been given powers to make laws with respect to the allotment, occupation or use, or the setting apart of land; the management of any forest not being a reserved forest; the use of any canal or water course for the purpose of agriculture; the regulation of the practice of *jhum* or other forms of shifting cultivation; the establishment of village or town committees or councils and their powers; any other matter relating to village or town administration including village or town police and public health and sanitation, appointment of headmen; inheritance of property; marriage and divorce; social customs. The *District Council* is given powers to make regulations for the regulation and control of money-lending or trading within

the district by persons other than Scheduled Tribes resident in the district. The *District Council* may establish, construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district. The *District Council* may constitute village councils or courts for trial of suits and cases between the parties all of whom belong to Scheduled Tribes within the areas of their jurisdiction. In suits and cases decided by the village councils or courts the provisions of the C.P.C. and Cr.P.C. do not apply. These courts do not try cases arising out of special laws or cases relating to offences of a serious nature (punishable with death, transportation for life or imprisonment for a term not less than five years). The Governor may, however, extend the jurisdiction of these courts to decide such cases by conferring the powers under the C.P.C. and Cr.P.C. for these cases. The jurisdiction of the Supreme Court and the High Court have been retained as in the other cases and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits and cases. The *District Councils* have also power to levy and collect taxes on lands, buildings and tolls on persons resident within such areas. Besides these powers, the *District Councils* have the power to levy and collect taxes on professions, trade, callings and employments, animals, vehicles and boats etc. The *District Councils* have power to assess and collect revenue in respect of such lands within their respective areas. The royalties accruing each year from licenses or leases for the purpose of prospecting for, or the extracting of minerals are to be shared between State Government and the *District Council*. No Act of Parliament or State Legislature with respect to matters on which the *District Council* has the power to make law shall apply to an autonomous district, unless the *District Council* so directs. The Governor of the State could exclude the operation of any Act of Parliament or of the State Legislature in these areas. There shall be constituted a *District Council Fund* in which all moneys received by the *District Council* shall be credited. The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous district. On the recommendation of the Commission, the Governor, may dissolve a *District Council*. The Governor may annual or suspend an Act or resolution of a District Council, if he is satisfied that such Act or resolution is likely to endanger the safety of India or likely to be prejudicial to public order. If at any time the

Governor is satisfied that a situation has arisen in which the administration of an autonomous district cannot be carried on in accordance with provisions of the *Sixth Schedule*, he may, by public notification, assume to himself all or any of the functions or powers of the *District Council* for a period of not exceeding six months. The Governor may declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf. Thus, the *Sixth Schedule* seeks to protect the autonomy of tribal areas in four basic ways : (a) by creating district councils for autonomous tribal district, (b) by giving administrative and legislative powers in specified matters to District Councils, (c) by providing for the non-application of the laws of the concerned State of these areas unless the *District Council* decides to apply an Act, and (d) by empowering the Governor not to apply an Act of Parliament or an Act of the Legislature of the State to an autonomous district. Thus, the idea is that in certain important matters the autonomy of the tribals should be maintained.

The enactment of special provisions under the *Sixth Schedule* to the Constitution for the governance of the tribal areas of North-East India necessarily have raised some problems and the problems are inherent in the *Sixth Schedule* which were dealt with by the Supreme Court and High Court. In these cases, however, the courts have evolved various principles with respect to the nature of District Council, scope of its lawmaking power, power of the Governor, applicability of State or Central legislations, applicability of procedural law etc. It emerges from the various judicial decisions that *District Councils* are autonomous body established to implement the right of self-governance. The Courts have held that *District Council* have all such executive powers as are necessary for the purposes of the administration of the district. The power of the *District Councils* to make laws are expressly limited by the provisions of the *Sixth Schedule*, because the *District Councils* unlike the Parliament and the State Legislatures are not intended to be clothed with plenary power of legislation. The State Legislature has a sort of overall superintendence over the *District Councils* and the executive authority of the State extends to the autonomous districts. Consequently, the Governor exercises his functions with the aid and advice of the Council of Ministers under the *Sixth Schedule*. The administration of justice is achieved by the *District Council* through their own agencies (village councils or courts)

except that in serious offences the Governor has to decide whether to invest the Councils and the Courts set up by the Councils with jurisdiction to try them. The *District Council* Courts (village council or courts) are performing judicial functions under the supervision of the High Court. The councils enjoy the powers of taxation and have their own funds. As regards the applicability of the Parliamentary law or law enacted by the State Legislature is concerned, all such laws which are not occupied by the provisions contained in paragraph 3 of the *Sixth Schedule* shall *proprio vigor* become operative in the tribal areas. All rules contained in procedural laws which are of universal application and are in accordance with the principles of justice, equity and good conscience are applicable in the trial suits in the *District Council* Courts. The *District Council* is not, however, a part of the government machinery of the State. Hence, persons appointed by the *District Council* are not employees under the State Government. Some actions of the *District Councils* are capable of being annulled by the Governor and the Governor may even dissolve the Councils. There is complete autonomy as far as the powers of jurisdiction of the Councils go. A check is supplied by the Governor and the Legislature of the State comes into picture only when the Governor takes action against the Councils to revoke their acts or resolutions or dissolves them and takes over the administration himself.

Thus, two types of political processes have been recognised under the *Fifth* and *Sixth Schedules* to the Constitution with regard to the protection of tribals for maintaining their autonomy, implementing their right to self-governance, and overall realisation of their other rights. The *Fifth Schedule* applies to any State other them States of Assam, Meghalaya, Tripura and Mizoram, and the *Sixth Schedule* applies to the States of Assam, Meghalaya, Tripura and Mizoram.

D. Political Processes Adopted in the State of Tripura - Old and New - Functioning of the TTAADC and the Evaluation of the Role an Impact of New Political Process in Realisation of the Rights of Tribals in Tripura

In Tripura due to the movement launched by the tribal people for the protection of their rights, the State Legislative Assembly passed an Act, the *Tripura Tribal areas Autonomous District Council Act, 1979* under which the *Tripura Tribal Areas Autonomous*

District Council was established. Subsequently, in 1984, the provisions of the *Sixth Schedule* to the Constitution were extended to the tribal areas in the State of Tripura. Since then a new political process has been started in the State of Tripura by establishing *Tripura Tribal Areas Autonomous District Council* for the realisation of the rights of Indigenous Peoples (regarded as tribals). Under the old political process, during the *Rajas* regime, a number of legal developments took place for the general administration. In this connection *Raja Birchandra Manikya, Radha Kighor Manikya, Birendra Kishore Manikya* had given more emphasis on administrative and judicial reforms. With due recognition of all good qualities of *Rajas,* it was noticed that only few tangible measures were adopted by them to improve living conditions of the tribal people and to help them in deriving benefits of socio-economic reforms. They remained in their forestclad hilly abodes and continued to eke out their livelihood in outlandish ways. *Raja Bir Bikram Kishore Manikya,* however, took an important step to protect tribal interest. In 1931, he reserved 285 sq. km. area of land for plough cultivation by certain hill-tribes, namely, Tripuries, Reangs, Jamatias, Noatias and Halams, so that, by resorting to the improved methods of cultivation, they could improve their economic conditions. Again in 1943 he reserved 5050 sq. km. area of land for the same purpose. These two areas together formed 5,335 sq. km. area of land which was about half of the total area of the State territory (10,477 sq. km.). The revenue-free and other permanently settled estates located within the boundaries of these reserved lands were excluded from the purview of the reservation. Within the reserved area, no transfer of land, without the previous permission of the Government, to any person not belonging any one of the above named five tribes was valid. It was provided that, if necessary, the Government itself would, in the absence of purchaser belonging to the above tribes, purchase it by paying price. But this measure was not found enough and lands were transferred to non-tribals on a extensive scale.

After the Indian Independence, condition of tribals moved in a different line because the population pattern of Tripura changed at an inconceivable, rapid rate. Unprecedented influx of displaced persons from East Bengal altered the balance in such a manner that the tribals were reduced from 50% to 29% of the total population of the State. Migration rate before partition, i.e., during

the decade 1941-51 was found to have been very much lower, namely, about 4.50%. But during the decade 1951-61 the migration rate increased to 51.47%. So the great influx of no-tribal population started after Independence. Due to this unprecedented pressure of migration, the tribals were gradually pushed into interior. They either sold their lands or simply abandoned their lands after frequent disputes or clashes. As a results tribal people began to lose their lands on account of transfers, even though such transfers of lands were not in accordance with law. This situation was examined by the *Dheber Commission* and *Administrative Reforms Commission* in 1950. The Dheber Commission had recommended *inter-alia* that *Tribal Development Blocks* could be set up as an experimental measure in tribal compact areas and if this measures failed to bring about any material improvement among the tribal people, measures under *Fifth Schedule* could be given a trial. The *Administrative Reforms Commission* also suggested that some compact tribal areas in the States, like, Manipur and Tripura could be specified and Tribal Councils be established there along with delegation of well defined administrative powers.

In the aforesaid situation, the Union Parliament passed the *Tripura Land Revenue and Land Reforms Act, 1960* (TLR & LR Act, 1960). The object of the *TLR & LR, Act, 1960* was to provide land cultivators a permanent, heritable and transferable right over land subject to reasonable restrictions in the interest of Scheduled Tribes. The Act provided some positive measures for the protection of tribals, like - (a) restriction on transfer of land by tribals and (b) restriction on transfer of land by non-tribals in Scheduled villages. Section 187 of the *TLR & LR Act, 1960,* provided that no transfer of land by a tribal to a no-tribal would be valid unless it is made with the prior permission of the Collector in writing. Further Section 107A of the Act provided that in certain villages which are predominantly inhabited by tribals, if a non-tribal wants to transfer his land he has to serve notice through competent authority to tribals owing adjacent to his land, of his intention to sell his land. If any of them are not interested to purchase the land, then State Government may purchase the same. However, the legal protection provided under the *TLR & LR Act, 1960* did not register any significant improvement in the situation of tribals in Tripura.

During 1970s there was also a persistent demand of the tribals for autonomy. The Government of Tripura, therefore, decided to set up an *Autonomous Council* for the predominantly tribal areas of the State with the objective to protect the social, economic and cultural interests of the tribal population. The Tripura Legislative Assembly, on March 23, 1979, passed the *Tripura Tribal Areas Autonomous District Council Act, 1979* (TTAADC Act, 1979) for the establishment of an *Autonomous District Council* for the tribal areas in the State of Tripura and for the purpose of Self-Governance by the tribals in such areas. The Act was modelled on the pattern of the *Sixth Schedule* to the Constitution of India. The Act declared predominately tribal compact areas as *tribal areas* which included 47 tehsils and 164 villages from all three districts of Tripura. The tribal areas covered 7, 132.56 sq. kms., which was the 68.07% of the total State's area. 6,26,173 people resided in the tribal areas which was the 30.50% of the total population of the State. Among them 4,46,049 people were tribals which amounted to 76.38% of the total population of the tribal area. The tribal areas were declared to constitute an *Autonomous District* and a *District Council* was established for exercising powers and functions. The *District Council* consisted of 28 members being elected on the basis of adult suffrage from territorial constituencies, out of whom three-fourths of the members (i.e. 21) must belong to Scheduled Tribes. The term of elected members of the *District Council* was five years. The Chairman and Vice-Chairman could be chosen by the *District Council* among its members. In the *District Council* an Executive Committee was formed consisting seven Executive Members including Chairman. The Chairman of the *District Council* was designated to be the head of the Executive Committee and he was authorised to select six persons amongst the members of the *District Council* as members of the Executive Committee. The executive functions of the *District Council* were vested in the Executive Committee. Each members of the Executive Committee was to be entrusted with specific subjects to be allocated by the Chairman. The State Government had the control over the *District Council*. The State Government had the power to appoint a Commission to inquest into and report on the administration of Autonomous District. The report of the Commission with recommendation of the government could be laid before the legislature of the State by the Government together with an explanatory Memorandum regarding the action proposed by the State Government therein.

In exercise of the powers conferred by the Act, the State Government of Tripura framed the *Tripura Tribal Areas Autonomous District Council (Conduct of Election) Rules, 1980.* But in the same year a communal riot took place in Tripura between tribal and non-tribal people which disturbed the public life. As a result the first general election was held in January, 1982 and the *Tripura Tribal Areas Autonomous District Council* was constituted through vote by the secret ballot. Immediately after its formation, the *District Council* started functioning to develop the tribal areas. The *District Council* was set up with 28 elected representatives. The Chairman and a Vice-Chairman were elected through vote from among 28 members. Thereafter five Executive Members were appointed by the Chairman and the Executive Committee was constituted. Besides this, seven Consultative Committees were formed to formulate policies and programmes on different subjects entrusted to the members of the Executive Committee. In addition, 10 Principal Officers were appointed. The development programmes of the Council were implemented by the Government agencies functioning at the block level. Although the *District Council* started functioning from 1982 but it had a very short life for about three years and thus, it is not possible to comment on the impact of the measures taken under the TTAADC Act, 1979.

Even the above mentioned measure of the State could not satisfy the aspirations of Tribal people of Tripura. The demand for extension of the *Sixth Schedule* to the Constitution of India to Tripura and establishment of the *Tripura Tribal Areas Autonomous District Council* under the *Sixth Schedule* in place of existing State Legislation of 1979 continued to grow because an *Autonomous District Council* under *Sixth Schedule* receives grants-in-aid from the Consolidated Fund of India to meet the costs of schemes of development. The responsibility of tribal areas under *Sixth Schedule* is vested on the Government of India and the schemes of development is to be implemented by the State Governments. In response to this popular demand, the special provisions of the Sixth Schedule were extended to the tribal areas in the State of Tripura by the *Forty-Ninth Amendment of the Constitution* in 1984. As a result, the Tripura Legislative Assembly had enacted the *Tripura Tribal Areas Autonomous District Council (Repeal) Act, 1985* to repeal the TTAADC Act, 1979, due to which, the Act of 1979 was repealed and the then existing District Council stood

dissolved. In place of the *District Council* a new *Tripura Tribal Areas Autonomous District Council* came into being on 1st April, 1985 under the *Sixth Schedule* to the Constitution. To implement the Constitutional provisions, the *Tripura Tribal Areas Autonomous District Council (Constitution and Election) Rules, 1985* were passed in the State Cabinet on 7th May, 1985 and general election was held on June 30, 1985. The elected members of the Council were sworn in on July 19, 1985 and the Chairman and Chief Executive Members were also elected on the same day by the Members of the *District Council*. Similar to the *TTAADC Act, 1979*, the *District Council Rules, 1985* provided that the *District Council* is to consist of 28 elected members on the basis of adult suffrage from territorial constituencies of whom three-fourths seets (i.e., *21 members*) is to be reserved for Scheduled Tribes. But the *District Council* Rules, 1985 added that the Governor may nominate a maximum of 2 persons as members of the *District Council*. Under the District Council Rules, 1985, the powers, functions and conduct of business of the Chairman Vice-Chairman, Executive Members, Executive Officers are similar to the *TTAADC Act, 1979*.

Since the formation of the *Tripura Tribal Areas Autonomous District Council* (TTAADC) under the *Sixth Schedule* to the Constitution (19th July, 1985) the Chairman and the Chief Executive Member are being elected from time to time. The Council Administration is headed by the Chief Executive Officer who is normally an IAS Officer, assisted by a Dy. Chief Executive Officer, a TCS Gr. I Officer and an Executive Officer of the rank of the TCS Gr. II Officer. In addition there are 14 Principal Officers as departmental heads. At present there are 14 departments, viz., Agriculture; Animal Husbandry; Co-operation; Education; Engineering; Fisheries; Forest; Industries; Information, Cultural Affairs, Youth Programme, Sports, Science and Technology; Public Health; Land; Law; Tribal Welfare; and Panchayat and Village Corporation. The Planning Cell is looked after by a Senior Research Officer. The PWD is managed by the Superintending Engineer with three Executive Engineers and other field staff. The Education Department has also its own set-up in the field. There are Four Zonal Development Offices and nineteen Sub-Zonal Development Offices.

Since its inception under the *Sixth Schedule* to the Constitution, the TTAADC has devoted itself to manifold activities and chalked out various programmes for the economic upliftment of the people through its different departments. Each department has its own schemes for generation of gainful employment for the poor tribal people and alleviate their poverty and help them to stand on their own feet. The Agriculture Department deals with the development activities of agriculture, horticulture, soil and water conservation, market development and composite farm. The Animal Husbandry Department is working with the aim of socio-economic development of people living in TTAADC areas through creation of permanent assets and self-employment programmes. The developmental schemes of animal husbandry are mainly beneficiary oriented aiming to reach the poor tribal families so that they can be assisted with inputs that would stand them in good stead in rearing brids and animals which they are accustomed to for generations. Co-operative Department plays an important role in the socio-economic development of the people residing in the TTAADC areas. In the TTAADC area, 55 different types of co-operative societies have been established to help the tribals and other persons residing in the TTAADC areas and to uplift their socio-economic condition by providing integrated credit and other services for increasing production, generating employment opportunities, undertaking distribution of essential commodities and arranging marketing of agricultural and minor forest produces. Education Department is the biggest department of the TTAADC having two wings - School Education and Social Education. The department has grown in size over the years. The Engineering Department is playing a key role in the development of communication, rural water supply, construction of buildings, implementation of irrigation schemes and establishment of headquarter complex. The Fishery Department of the TTAADC deals with the development of socio-economic conditions of the poor tribals by motivating them towards fish culture and other associated trades. In this connection provisions have been made for imparting fishery training for fish breeding, net weaving, making of fishing traps/buskets etc. The Forest Department of TTAADC has formulated afforestrution schemes in order to make a suitable economic base for the tribals who are mostly dependent on *Jhum* cultivation and other marginal framing. The Health Department of the TTAADC provides all sorts of help and

assistance for taking proper care of health of the tribal people of remote areas. Schemes for free distribution of medicines etc. through Health Camps, P.H.C., Sub-centres to the people of TTAADC area have been taken up by the department. The Information, Cultural Affairs and Youth Programme Department plays a vital role in developing the culture of tribals assimilating the people and informing the people about the activities of TTAADC through booklets, pamphlets, feature, poster, press release etc. The Industry Department has undertaken five types of integrated schemes for the economic upliftment of the people within TTAADC area. These schemes are : Industrial training centre scheme, distribution of yarn to poor and distressed tribal (women) weavers scheme, assistance to rural artisan and ex-trainees scheme, sericulture scheme and study tour scheme. The Land Record and Settlement Department has given special emphasis on allotment of land to landless tribals and *Jhumias*. The Tribal Welfare Department has undertaken a number of schemes which are directly beneficial to the tribal people of the TTAADC area. In this way the TTAADC has been implementing various schemes through it's different departments for the overall development of the tribals.

Besides the developmental activities, the TTAADC has also devoted itself to legislative activities. Since the inception of the TTAADC under the *Sixth Schedule* to the Constitution, it has enacted 34 Acts, Rules, Regulations and Amendments till December 1998. Among these 34 enactments, 25 have received the assent of the Governor, 2 have been returned and 7 are awaiting for the assent of the Governor. The *District Council* has enacted the *Tripura Tribal Areas Autonomous District Council (Establishment, Management and Control of Market) Regulations, 1987* to regulate, control, establish and manage the markets and to levy and collecting taxes on the entry of goods into such markets within the *Autonomous District Council* area. This is the first Regulation which has been enacted by the TTAADC under the *Sixth Schedule* to the Constitution. The *District Council* has enacted the *Tripura District Council Trading (Licensing and Control) Regulations, 1989* to regulate and control the trading within the *Tripura Tribal Area Autonomous District Council* area which is one of the main objects of the *Sixth Schedule* to the Constitution. To establish and develop local-government and to make better provisions for the

administration of towns into well developed and sufficient units, the TTAADC has made the *Tripura Tribal Areas Autonomous District (Establishment of Town Committee) Act, 1989*. To regulate, control and prescribe the *Kok-Barak* language and the manner in which the Primary Education is to be imparted in the Primary Schools in the Autonomous District, the TTAADC has made the *Tripura Tribal Areas Autonomous District Council Primary Schools (Language) Regulations, 1992*. Through these Regulations has been made an attempt to implement the right of the tribals related to language. The TTAADC has also enacted the *Tripura Tribal Areas Autonomous District (Establishment of Village Committee) Act, 1994* for the establishment of Village Committees in villages of *Tripura Tribal Areas Autonomous District* where it is expedient to establish and develop local self-government. The function of the Village Committees are similar to Panchayats. Therefore, the *Tripura Panchayats Act, 1993* is not applicable to TTAADC areas. To establish and regulate village police and town police in the *Tripura Tribal Areas Autonomous District*, the TTAADC has enacted the *Tripura Tribal Area Autonomous District Council Police Act, 1997*. Thus, the TTAADC has enacted the above mentioned Acts, Rules and Regulations under the framework of the Sixth Schedule to the Constitution. This shows that TTAADC has functioned well like competent legislative body.

Under the new political process the *Tripura Tribal Areas Autonomous District Council* (TTAADC) has been established for the protection of the tribals and realisation of their rights. The TTAADC under the *Sixth Schedule* to the Constitution has been in existence for about last 14 years. During all these years, the TTAADC has been performing administrative as well as legislative functions. But during all these years, the TTAADC has not been able to live up to the people's expectations. In general, certain deficiencies have been noticed in the functioning of the TTAADC. One of the main objects of the *Sixth Schedule* is to protect the culture and social customs of the tribals and in this respect the *Sixth Schedule* has given legislative power to the TTAADC for enacting laws on tribal culture and custom. The TTAADC has, however, not been able to enact any of the customary laws so far relating to inheritance of property, marriage, custom etc. The TTAADC should codify tribal customary laws and rules with respect to inheritance of property, marriage and customs, etc., and establish District

Council Courts for administration of justice as early as possible. Under the *Sixth Schedule* there is a clear provision empowering the *District Council* to constitute District Council Courts (Village Courts) for the trial of suits and cases between such parties all of whom belong to Scheduled Tribes, but no such courts are being established so far by the TTAADC. Hence, all cases are coming before the regular traditional courts. In order to establish and develop the local self-government the TTAADC has enacted the *TTAADC (Establishment of Town Committee) Act, 1989 and TTAADC (Establishment of Village Committee) Act, 1994*, but general election has not been held so far for the Constitution of Town and Village Committees. Still the matter is pending in the Gauhati High Court. The TTAADC should establish village committees and town committees to establish and develop the local self-government as early as possible. The TTAADC has also failed to establish healthy conventions in performance of their functions. No serious effort has been made to follow healthy Parliamentary practices in the legislative field and the control of the legislative wing over the executive wing is almost non-existent. There is also inadequate coordination between their official departments and political components. The TTAADC should establish healthy conventions in performance of its functions. In this connection an effort should be made to follow healthy parliamentary practices in the legislative field and also to enhance the control of the legislative wing over the executive wing. An effort should also be made to establish adequate coordination between the official departments of TTAADC and political components. There are nine *District Councils* working under the *Sixth Schedule* but there is no common set of rules to all of them covering the framework of the *District Councils*. The *Sixth Schedule* provides that the total members of a *District Council shall* not exceed 30. The actual composition of the *District Council* varies from State to State. It is desirable that there should not be a set of rules common to all of them, covering the framework of the *District Councils*, which the Councils themselves will not have the power to amend. The *Sixth Schedule* needs to be suitably amended for this purpose. *Sixth Schedule* provides that maximum 4 members should be nominated by the Governor, but it is not clear from which class of people such member is to be nominated by the Governor. The *Sixth Schedule* should spell out the class of people out of which a member is to be nominated by the Governor. The *Sixth Schedule* empowers the Governor to take over all or any

of the powers and functions of a *District Council* for a certain period. But he can prematurely dissolve a *District Council* only on the receipt of the report of a Commission appointed under the Schedule. This is an elaborate process. At the present time the political instability at the State level generally affects the stability of a *District Council*. In this situation the Governor is dependent on the report of the Commission. The Governor has no power under the *Sixth Schedule* to dissolve the council immediately. The Governor should have the power to dissolve a council prematurely and have fresh elections to restore stability when it is lose as a result of defence etc. The *Sixth Schedule* needs to be suitably amended for this purpose. The *Sixth Schedule* gives powers to frame rules regarding qualifications for being elected at elections as a member of a *District Council*. In the absence of specific power in the *Schedule* to make rules prescribing disqualifications for members, it is doubtful whether a *District Council* can legislate to disqualify a defaulting member from contesting an election. A suitable amendment may give councils the power to do so, even though it is not certain that the power would be used.

TO CONCLUDE it may be said that the term "Indigenous Peoples" have been well recognised at international level; although the Indian Government has officially not declared that there are Indigenous Peoples (Groups) in India, this term can very well be attributed to the "Scheduled Tribes" of India; the UN Human Rights Commission, ILO and World Bank have already included the tribal population of India within the compass of the Indigenous Peoples/Groups. The problems of Indigenous Peoples are basically human rights problems closely linked with the collective human rights and the promotion, protection and realisation of such human rights of Indigenous Peoples have become, during the last decade, the major challenge of UN human rights activities. The 1990s have witnessed the UN human rights work turning from individual human rights towards collective human rights at the international level culminating into the recognition of certain collective rights of Indigenous Peoples related to either land and resources or culture, language and education or development. Although there is a general unanimity amongst the international bodies that the recognition of the right to Self-determination is a pre-requisite for the realisation of the aforesaid collective rights of Indigenous Peoples, the right related to Self-determination, Autonomy and

Self-government has not been, by and large, acceded to in favour of Indigenous Peoples by the majority of States as the numerical strength of the members of various Indigenous Groups are small and the lands occupied by the members of such Groups have been circumvented by the lands occupied by others within the boundaries of the main sovereign States and, thus, are incapable of forming a viable Nation/State of itself economically as well as geographically. The States are also reluctant to, and have virtually refused to, grant full Autonomy and Self-government to the Indigenous Peoples on the ground of the protection of their *territorial integrity, security* and *sovereignty*. The aforesaid two diametrically opposed stands have been tried to be resolved by dividing the right to Self-determination into two parts : *external* Self-determination and *internal* Self-determination. While right to *external* Self-determination entailing independence, statehood and secession had been outrightly denied to Indigenous Peoples, the majority of States including India have made serious efforts to grant Indigenous Peoples the right to *internal* Self-determination, short of full independence and autonomy to the extent of statehood. The international consensus also appears to favour the *internal* aspect of the right of self-determination for the realisation of the rights of Indigenous Peoples and has circumscribed the exercise of the right of the Autonomy or Self-government by the Indigenous Peoples within the sovereignty of the State in which they reside. India, although does not officially recognise the rights of Indigenous Peoples (regarded as tribals) in such form as has been recognised at international level, its Constitution provides for two types of political processes for the realisation of the rights of tribals under the *Fifth* and *Sixth Schedules* to the Constitution. The provision for the establishment of the Autonomous District Councils for each State under the *Sixth Schedule* applicable to the States of Assam, Meghalaya, Tripura and Mizoram is primarily meant for providing a viable institution for the realisation of the rights and fulfilling the aspirations of the Tribals. The in-depth study of the *Tripura Tribal Areas Autonomous District Council* (TTAADC) formed under the *Sixth Schedule* has proved that the TTAADC can serve as a model for realisation of the rights of Indigenous Peoples. The empirical study also reveals that the TTAADC under the *Sixth Schedule* has devoted itself to manifold activities and chalked out programmes from the economic upliftment of the tribal people through its different departments;

each department has its own schemes for generation of gainful employment for the poor tribal people and alleviate their poverty and help them to stand on their own feet. It also emerges from the empirical study that although TTAADC has exercised its legislative power by enacting 34 Acts, Rules, Regulations and Amendments till December 1998, the lawmaking power of the TTAADC is checked and controlled by the Governor. The TTAADC has, by and large, functioned well as an administrative as well as legislative body, dominated by tribals, working under the broad framework of the Constitution to implement the right of tribals' self-governance and had played an important and effective role in the realisation of the rights of Indigenous Peoples of Tripura. Thus, it can be safely concluded that the new political process provided by the Constitution of India has a potency with regard to the realisation of various rights of Indigenous Peoples including the right of *internal* Self-determination. However, in order to make the process more successful and effective for the purposes of realisation of the rights of Indigenous Peoples and fulfilling their aspirations as well as for complying the norms and requirements of international law in this regard, it is necessary that the deficiencies and shortcomings pointed out in the present research are removed and suggestions/recommendations made herein are given serious consideration for making the institution provided by the new political process under the Constitution of India more effective and purposeful for achieving the goals and objectives with regard to the realisation of the rights of Scheduled Tribes - Indigenous Peoples. It is also hoped that the present work and findings arrived therein would also be beneficial to the planners, administrators, law makers and other personnel associated with the functioning of the administrative machinaries set up by the Central and State governments under the new political process evolved under the Constitution of India for the purposes of recognition and realisation of various rights of Scheduled Tribes in reality (treated to be Indigenous Peoples at international level) of the three North-Indian States in general and the State of Tripura in particular.

APPENDIX - I

Convention (No. 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries

Adopted by the International Labour Conference at its Fortieth Session at Geneva on 26 June, 1957.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957, and

Having decided upon the adoption of certain proposals with regard to the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population, and

Considering it desirable both for humanitarian reasons and in the interest of the countries concerned to promote continued action to improve the living and working conditions of these populations by simultaneous action in respect of all the factors which have hitherto prevented them from sharing fully in the progress of the national community of which they form part, and

Considering that the adoption of general international standards on the subject will facilitate action to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions, and

Noting that these standards have been framed with the co-operation of the United Nations, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organization, at appropriate levels and in their respective fields, and that it is proposed to seek their continuing co-operation in promoting and securing the application of these standards,

adopts this twenty-sixth day of June of the year one thousand nine hundred and fifty-seven the following Convention, which may be cited as the Indigenous and Tribal Populations Convention, 1957:

Part I. General Policy

Article 1

1. This Convention applies to:

   (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage

reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time with the institutions of the nation to which they belong.

2. For the purposes of this Convention, the term 'semi-tribal' includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.

3. The indigenous and other tribal or semi-tribal populations mentioned in paragraphs 1 and 2 of this Article are referred to hereinafter as 'the populations concerned'.

Article 2

1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

2. Such action shall include measures for:

(a) enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the populations;

(b) promoting the social, economic and cultural development of these populations and raising their standard of living;

(c) creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

3. The primary objective of all such action shall be the fostering of individual dignity, and the advancement of individual usefulness and initiative.

4. Recourse to force or coercion as a means of promoting the integration of these populations into the national community shall be excluded.

Article 3

1. So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations.

2. Care shall be taken to ensure that such special measures of protection:

   (a) are not used as a means of creating or prolonging a state of segregation; and

   (b) will be continued only so long as there is need for special protection and only to the extent that such protection is necessary.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures of protection.

Article 4

In applying the provisions of this Convention relating to the integration of the populations concerned:

(a) due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations, and of the nature of the problems which face them both as groups and as

individuals when they undergo social and economic change;

(b) the danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognized;

(c) policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.

Article 5

In applying the provisions of this Convention relating to the protection and integration of the populations concerned, governments shall:

(a) seek the collaboration of these populations and of their representatives;

(b) provide these populations with opportunities for the full development of their initiative;

(c) stimulate by all possible means the development among these populations of civil liberties and the establishment of or participation in elective institutions.

Article 6

The improvement of the conditions of life and work and level of education of the populations concerned shall be given high priority in plans for the overall economic development of areas inhabited by these populations. Special projects for economic development of the areas in question shall also be so designed as to promote such improvement.

Article 7

1. In defining the rights and duties of the populations concerned regard shall be had to their customary laws.

2. These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.

3. The application of the preceding paragraphs of this Article shall not prevent members of these populations from exercising, according to their individual capacity, the rights granted to all citizens and from assuming the corresponding duties.

Article 8

To the extent consistent with the interests of the national community and with the national legal system:

(a) the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;

(b) where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases.

Article 9

Except in cases prescribed by law for all citizens the exaction from the members of the populations concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punisnable by law.

Article 10

1. Persons belonging to the populations concerned shall be specially safeguarded against the improper application of preventive detention and shall be able to take legal proceedings for the effective protection of their fundamental rights.

2. In imposing penalties laid down by general law on members of these populations account shall be taken of the degree of cultural development of the populations concerned.

3. Preference shall be given to methods of rehabililation rather than confinement in prison.

Part - II Land

Article 11

The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.

Article 12

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned-prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

3. Persons thus removed shall be fully compensated for any resulting loss or injury.

Article 13

1. Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.

2. Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the members of these populations to secure the ownership or use of the lands belonging to such members.

Article 14

National agrarian programmes shall secure to the populations concerned treatment equivalent to that accorded to other sections of the national community with regard to:

(a) the provision of more land for these populations when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these populations already possess.

Part III. Recruitment and Conditions of Employment

Article 15

1. Each Member shall, within the framework of national laws and regulations, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to the populations concerned so long as they are not in a position to enjoy the protection granted by law to workers in general.

2. Each Member shall do everything possible to prevent all discrimination between workers belonging to the populations concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, the prevention of employment injuries, workmen's compensation, industrial hygiene and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers organizations.

Part IV. Vocational Training, Handicrafts and Rural Industries

Article 16

Persons belonging to the populations concerned shall enjoy the same opportunities as other citizens in respect of vocational training facilities.

Article 17

1. Whenever programmes of vocational training of general application do not meet the special needs of persons belonging to the populations concerned governments shall provide special training facilities for such persons.

2. These special training facilities shall be based on a careful study of the economic environment, stage of cultural development and practical needs of the various occupational groups among the said populations; they shall, in particular, enable the persons concerned to receive the training necessary for occupations for which these populations have traditionally shown aptitude.

3. These special training facilities shall be provided only so long as the stage of cultural development of the populations concerned requires them; with the advance of the process of integration they shall be replaced by the facilities provided for other citizens.

Article 18

1. Handicrafts and rural industries shall be encouraged as factors in the economic development of the populations concerned in a manner which will enable these populations to raise their standard of living and adjust themselves to modern methods of production and marketing.

2. Handicrafts and rural industries shall be developed in a manner which preserves the cultural heritage of these

populations and improves their artistic values and particular modes of cultural expression.

Part V. Social Security and Health

Article 19

Existing social security schemes shall be extended progressively, where practicable, to cover:

(a) wage earners belonging to the populations concerned;

(b) other persons belonging to these populations.

Article 20

1. Governments shall assume the responsibility for providing adequate health service for the populations concerned.

2. The organization of such services shall be based on systematic studies of the social, economic and cultural conditions of the populations concerned.

3. The development of such services shall be co-ordinated with general measures of social, economic and cultural development.

Part VI. Education and Means of Communication

Article 21

Measures shall be taken to ensure that members of the populations concerned have the opportunity to acquire education at all levels on an equal footing with the rest of the national community.

Article 22

1. Education programmes for the populations concerned shall be adapted, as regards methods and techniques, to the stage these populations have reached in the process of social, economic and cultural integration into the national community.

2. The formulation of such programmes shall normally be preceded by ethnological surveys.

Article 23

1. Children belonging to the populations concerned shall be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong.

2. Provision shall be made for a progressive transition from the mother tongue or the vernacular language to the national language or to one of the official languages of the country.

3. Appropriate measures shall, as far as possible, be taken to preserve the mother tongue or the vernacular language.

Article 24

The imparting of the general knowledge and skills that will help children to become integrated into the national community shall be an aim of primary education for the populations concerned.

Article 25

Educational measures shall be taken among other sections of the national community and particularly among those that are in most direct contract with the populations concerned with the object of eliminating prejudices that they may harbour in respect of these populations.

Article 26

1. Governments shall adopt measures, appropriate to the social and cultural characteristics of the populations concerned, to make known to them their rights and duties, especially in regard to labour and social welfare.

2. If necessary this shall be done by means of written translations and through the use of media of mass communication in the languages of these populations.

Part VII. Administration

Article 27

1. The governmental authority responsible for the matters covered in this Convention shall create or develop agencies to administer the programmes involved.

2. These programmes shall include:

   (a) planning, co-ordination and execution of appropriate measures for the social, economic and cultural development of the populations concerned;

   (b) proposing of legislative and other measures to the competent authorities;

   (c) supervision of the application of these measures.

Part VIII. General Provisions

Article 28

The nature and the scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 29

The application of the provisions of this Convention shall not affect benefits conferred on the populations concerned in pursuance of other Conventions and Recommendations.

Article 30

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 31

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 32

1. A Member which has ratified this Convention may denounce it after the expiration of 10 years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of 10 years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of 10 years and, thereafter, may denounce this Convention at the expiration of each period of 10 years under the terms provided for in this Article.

Article 33

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 34

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for

registrations in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 35

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 36

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

   (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 32 above, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 37

The English and French versions of the text of this Convention are equally authoritative.

Recommendation (No. 104) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries

Adopted by the International Labour Conference at its Fortieth Session at Geneva on 26 June, 1957

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June, 1975, and

Having decided upon the adoption of certain proposals with regard to the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, supplemening the Indigenous and Tribal Populations Convention, 1957, and

Noting that the following standards have been framed with the co-operation of the United nations, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World

Health Organization, at appropriate levels and in their respective fields, and that it is proposed to seek their continuing co-operation in promoting and securing the application of these standards,

adopts this twenty-sixth day of June of the year one thousand nine hundred and fifty-seven the following Recommendation, which may be cited as the Indigenous and Tribal Populations Recommendation, 1957:

The Conference recommends that each Member should apply the following provisions:

I. Preliminary Provisions

1. (1) This Recommendation applies to-

(a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status, live than with the institutions of the nation to which they belong.

(2) For the purposes of this Recommendation, the term 'semi-tribal' includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.

(3) The indigenous and other tribal or semi-tribal populations mentioned in subparagraphs (1) and (2)

of this paragraph are referred to hereinafter as 'the populations concerned'.

II. Land

2. Legislative or administrative measures should be adopted for the regulation of the conditions, *de facto* or *de jure,* in which the populations concerned use the land.

3. (1) The populations concerned should be assured of a land reserve adequate for the needs of shifting cultivation so long as no better system of cultivation can be introduced.

(2) Pending the attainment of the objectives of a settlement policy for semi-nomadic groups, zones should be established within which the livestock of such groups can graze without hindrance.

4. Members of the populations concerned should receive the same treatment as other members of the national population in relation to the ownership of underground wealth or to preference rights in the development of such wealth.

5 (1) Save in exceptional circumstances defined by law the direct or indirect lease of lands owned by members of the populations concerned to persons or bodies not belonging to these populations should be restricted.

(2) In cases in which such lease is allowed, arrangements should be made to ensure that the owners will be paid equitable rents. Rents paid in respect of collectively owned land should be used, under appropriate regulations, for the benefit of the group which owns it.

6. The mortgaging of land owned by members of the populations concerned to a person or body not belonging to these populations should be restricted.

7. Appropriate measures should be taken for the elimination of indebtedness among farmers belonging to the populations concerned. Co-operative systems of credit should be organized and low-interest loans, technical aid

and, where appropriate, subsidies, should be extended to these farmers to enable them to develop their lands.

8. Where appropriate, modern methods of co-operative production, supply and marketing should be adapted to the traditional forms of communal ownership and use of land and production implements among the populations concerned and to their traditional systems of community service and mutual aid.

III. Recruitment and Conditions of Employment

9. So long as the populations concerned are not in a position to enjoy the protection granted by law to workers in general, recruitment of workers belonging to these populations should be regulated by providing, in particular, for-

   (a) licensing of private recruiting agents and supervision of their activities;

   (b) safeguards against the disruptive influence of the recruitment of workers on their family and community life, including measures-

      (i) Prohibiting recruitment during specified periods and in specified areas;

      (ii) enabling workers to maintain contact with, and participate in important tribal activities of, their communities of origin; and

      (iii) ensuring protection of the dependants of recruited workers;

   (c) fixing the minimum age for recruitment and establishing special conditions for the recruitment of non-adult workers;

   (d) establishing health criteria to be fulfilled by workers at the time of recruitment;

   (e) establishing standards for the transport of recruited workers;

   (f) ensuring that the worker-

(i) understands the conditions of his employment, as a result of explanation in his mother tongue;

(ii) freely and knowingly accepts the conditions of his employment.

10. So long as the populations concerned are not in a position to enjoy the protection granted by law to workers in general, the wages and the personal liberty of workers belonging to these populations should be protected, in particular, by providing that-

(a) wages shall normally be paid only in legal tender;

(b) the payment of any part of wages in the form of alcohol or other spirituous beverages or noxious drugs shall be prohibited;

(c) the payment of wages in taverns or stores, except in the case of workers employed therein, shall be prohibited;

(d) the maximum amounts and manner of repayment of advances on wages and the extent to which and conditions under which deductions from wages may be permitted shall be regulated;

(e) work stores or similar services operated in connection with the undertakings shall be supervised;

(f) the withholding or confiscation of effects and tools which workers commonly use, on the ground of debt or unfulfilled labour contract, without prior approval of the competent judicial or administrative authority shall be prohibited;

(g) interference with the personal liberty of workers on the ground of debt shall be prohibited.

11. The right to repatriation to the community of origin, at the expense of the recruiter or the employer, should be ensured in all cases where the worker-

(a) becomes incapacitated by sickness or accident during the journey to the place of employment or in the course of employment;

(b) is found on medical examination to be unfit for employment;

(c) is not engaged, after having been sent forward for engagagement, for a reason for which he is not responsible;

(d) is found by the competent authority to have been recruited by misrepresentationor mistake.

12. (1) Measures should be taken to facilitate the adaptation of workers belonging to the populations concerned to the concepts and methods of industrial relations in a modern society.

(2) Where necessary, standard contracts of employment should be drawn up in consultation with representatives of the workers and employers concerned. Such contracts should set out the respective rights and obligations of workers and employers, together with the conditions under which the contracts may be terminated. Adequate measures should be taken to ensure observance of these contracts.

13. (1) Measures should be adopted, in conformity with the law, to promote the stabilization of workers and their families in or near employment centres, where such stabilization is in the interests of the workers and of the economy of the countries concerned.

(2) In applying such measures, special attention should be paid to the problems involved in the adjustment of workers belonging to the populations concerned and families to the forms of life and work of their new social and economic environment.

14. The migration of workers belonging to the populations concerned should, when considered to be contrary to the interests of these workers and of their communities, be discouraged by measures designed to raise the standards of living in the areas which they traditionally occupy.

15. (1) Governments should establish public employment services, stationary or mobile, in areas in which workers belonging to the populations concerned are recruited in large numbers.

(2) Such services should, in addition to assisting workers to find employment and assisting employers to find workers-

(a) determine the extent to which manpower shortages existing in other regions of the country could be met by manpower available in areas inhabited by the populations concerned without social or economic disturbance in these areas;

(b) advise workers and their employers on provisions concerning them contained in laws, regulations and contracts, relating to wages, housing, benefits for employment injuries, transportation and other conditions of employment;

(c) co-operate with the authorities responsible for the enforcement of laws or regulations ensuring the protection of the populations concerned and, where necessary, be entrusted with responsibility for the control of procedures connected with the recruitment and conditions of employment of workers belonging to these populations.

IV. Vocational Training

16. Programmes for the vocational training of the populations concerned should include provisions for the training of members of these populations as instructors. Instructors should be conversant with such techniques, including where possible an understanding of anthropological and psychological factors, as would enable them to adapt their teaching to the particular conditions and needs of these populations.

17. The vocational training of members of the populations concerned should, as far as practicable, be carried out near the place where they live or in the place where they work.

18. During the early stages of integration this training should be given, as far as possible, in the vernacular language of the group concerned.

19. Programmes for the vocational training of the populations concerned should be co-ordinated with measures of assistance enabling independent workers to acquire the necessary materials and equipment and assisting wage earners in finding employment appropriate to their qualifications.

20. Programmes and methods of vocational training for the populations concerned should be co-ordinated with programmes and methods of fundamental education.

21. During the period of vocational training of members of the populations concerned, they should be given all possible assistance to enable them to take advantage of the facilities provided, including, where feasible, scholarships.

V. Handicrafts and Rural Industries

22. Programmes for the promotion of handicrafts and rural industries among the populations concerned should, in particular, aim at-

    (a) improving techniques and methods of work as well as working conditions;

    (b) developing all aspects of production and marketing, including credit facilities, protection against monopoly controls and against exploitation by middlemen, provision of raw materials at equitable prices, establishment of standards of craftsmanship, and protection of designs and of special aesthetic features of products; and

    (c) encouraging the formation of co-operatives.

VI. Social Security and measures of assistance

23. The extension of social schemes to workers belonging to the populations concerned should be preceded or accompanied, as conditions may require, by measures to improve their general social and economic conditions.

24. In the case of independent primary producers provision should be mad for-

    (a) instruction in modern methods of farming;

    (b) supply of equipment, for example implements, stocks, seeds; and

    (c) protection against the loss of livelihood resulting from natural hazards to crops or stock.

VII. Health

25. The populations concerned should be encouraged to organize in their communities local health boards or committees to look after the health of their members. The formation of these bodies should be accompanied by a suitable educational effort to ensure that full advantage is taken of them.

26. (1) Special facilities should be provided for the training of members of the populations concerned as auxiliary health workers and professional medical and sanitary personnel, where these members are not in a position to acquire such training through the ordinary facilities of the country.

    (2) Care should be taken to ensure that the provision of special facilities does not have the effect of depriving members of the populations concerned of the opportunity to obtain their training through the ordinary facilities.

27. The professional health personnel working among the populations concerned should have training in anthropological and psychological techniques which will

enable them to adapt their work to the cultural characteristics of these populations.

VIII. Education

28. Scientific research should be organized and financed with a view to determining the most appropriate methods for the teaching of reading and writing to the children belonging to the populations concerned and for the utilization of the mother tongue or the vernacular language as a vehicle of instruction.

29. Teachers working among the populations concerned should have training in anthropological and psychological techniques which will enable them to adapt their work to the cultural characteristics of these populations. These teachers should, as far as possible, be recruited from among such populations.

30. Pre-vocational instruction, with emphasis on the teaching of subjects relating to agriculture, handicrafts, rural industries and home economics, should be introduced in the programmes of primary education intended for the populations concerned.

31. Elementary health instruction should be included in the programmes of primary education intended for the populations concerned.

32. The primary education of the populations concerned should be supplemented, as far as possible, by campaigns of fundamental education. These campaigns should be designed to help children and adults to understand the problems of their environment and their rights and duties as citizens and individual, thereby enabling them to participate more effectively in the economic and social progress of their community.

IX. Languages and other means of Communication

33. Where appropriate the integration of the populations concerned should be facilitated by-

(a) enriching the technical and juridical vocabulary of their vernacular languages and dialects;

(b) establishing alphabets for the writing of these languages and dialects;

(c) publishing in these languages and dialects readers adapted to the educational and cultural level of the populations concerned; and

(d) publishing bilingual dictionaries.

34. Methods of audio-visual communication should be employed as means of information among the populations concerned.

X. Tribal Groups in Frontier Zones

35. (1) Where appropriate and practicable, inter-governmental action should be taken, by means of agreements between the governments concerned, to protect semi-nomadic tribal groups whose traditional territories lie across international boundaries.

(2) Such action should aim in particular at-

(a) ensuring that members of these groups who work in another country receive fair wages in accordance with the standards in operation in the region of employment;

(b) assisting these workers to improve their conditions of life without discrimination on account of their nationality or of their semi-nomadic character.

XI. Administration

36. Administrative arrangements should be made, either through government agencies specially created for the purpose or through appropriate co-ordination of the activities of other government agencies, for-

(a) ensuring enforcement of legislative and administrative provisions for the protection and integration of the populations concerned;

(b) ensuring effective possession of land and use of other natural resources by members of these populations;

(c) administering the property and income of these populations when necessary in their interests;

(d) providing free legal aid for the members of the populations concerned that may need legal aid but cannot afford it;

(e) establishing and maintaining educational and health services for the populations concerned;

(f) promoting research designed to facilitate understanding of the way of life of such populations and of the process of their integration into the national community;

(g) preventing the exploitation of workers belonging to the populations concerned on account of their unfamiliarity with the industrial environment to which they are introduced;

(h) where appropriate, supervising and co-ordinating, within the framework of the programmes of protection and integration, the activities, whether philanthropic or profit-making, carried out by individuals and corporate bodies, public or private, in regions inhabited by the populations concerned.

37. (1) National agencies specifically responsible for the protection and integration of the populations concerned should be provided with regional centres, situated in areas where these populations are numerous.

(2) These agencies should be staffed by officials selected and trained for the special tasks they have to perform. As far as possible, these officials should be recruited from among the members of the populations concerned.

APPENDIX - III

Declaration of San Jose on Ethno-Development

Adopted by the UNESCO Meeting of Experts on Ethno-Development and Ethnocide in Latin America, San Jose, Dec. 11, 1981. UNESCO Doc. FS 82/WF.32 (1982).

For the past few years, increasing concern has been expressed at various international forums over the problems of the loss of cultural identity among the Indian populations of Latin America. This complex process, which has historical, social, political and economic roots, has been termed *ethnocide.*

Ethnocide means that an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually. This involves an extreme form of massive violation of human rights and, in particular, the right of ethnic groups to respect for their cultural identity, as established by numerous declarations, covenants and agreements of the United Nations and its Specialized Agencies, as well as various regional intergovernmental bodies and numerous non-government organizations.

In response to this demand, UNESCO organized an international meeting on ethnocide and ethno-development in Latin America, in collaboration with FLACSO, which was held in December 1981 in San Jose, Costa Rica.

The participants in the meeting, Indian and other experts, made the following Declaration:

1. We declare that ethnocide, that is, cultural genocide, is a violation of international law equivalent to genocide, which was condemned by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

2. We affirm that ethno-development is an inalienable right of Indian groups.

3. By ethno-development we mean the extension and consideration of the elements of its own culture, through strengthening the independent decision-making capacity of a culturally distinct society to direct its own development and exercise self-determination, at whatever level, which implies an equitable and independent share of power. This means that the ethnic group is a political and administrative unit, with authority over its own territory and decision-making powers within the confines of its development project, in a process of increasing autonomy and self-management.

4. Since the European invasion, the Indian peoples of America have seen their history denied or distorted, despite their great contributions to the progress of manikind, which has led to the negation of their very existence. We reject this unacceptable misrepresentation.

5. As creators, bearers and propagators of civilizing dimension of their own, as unique and specific facets of the heritage of mankind, the Indian peoples, nations and ethnic groups of America are entitled, collectively and individually, to all civil, political, economic, social and cultural rights now threatened. We, the participants in this meeting, demand universal recognition of all these rights.

6. For the Indian peoples, the land is not only an object of possession and production. It forms the basis of their existence, both physical and spiritual, as an independent entity. Territorial space is the foundation and source of their relationship with the universe and the mainstay of their view of the world.

7. The Indian peoples have a natural and inalienable right to the territories they possess as well as the right to recover

the land taken away from them. This implies the right to the natural and cultural heritage that this territory contains and the right to determine freely how it will be used and exploited.

8. As essential part of the cultural heritage of these peoples is their philosophy of life and their experience, knowledge and achievements accumulated throughout history in the cultural, social, political, legal, scientific and technological sphere. They, therefore, have a right to access to and use, dissemination and transmission of this entire heritage.

9. Respect for the forms of autonomy required by the Indian peoples is an essential condition for guaranteeing and implementing these rights.

10. Furthermore, the Indian peoples' own forms of internal organization are part of their cultural and legal heritage which has contributed to their cohesion and to maintaining their socio-cultural traditions.

11. Disregard for these principles constitutes a gross violation of the right of all individuals and peoples to be different, to consider themselves as different and to be regarded as such, a right recognized in the Declaration on Race and Racial Prejudice adopted by the UNESCO General Conference in 1978, and should therefore be condemned, especially when it creates a risk of ethnocide.

12. In addition, disregard for these principles creates disequilibrium and lack of harmony within society and may incite the Indian peoples to the ultimate resort of rebellion against tyranny and oppression, thereby endangering world peace. It, therefore, contravenes the United Nations Charter and the Constitution of UNESCO.

As a result of their reflections, the participants appeal to the United Nations, UNESCO, the ILO, WHO and FAO as well as to the Organizations of American States and the Inter American Indian Institute, to take the necessary steps to apply these principles in full.

The participants address their appeal to Member States of the United Nations and the above-mentioned Specialized

Agencies, requesting them to give special attention to the application of these principles, and also to collaborate with international intergovernmental and non-governmental organizations, both universal and regional including, in particular, Indian organizations, in order to ensure observance of the fundamental rights of the Indian peoples of America.

This appeal is also addressed to officials in the legislative, executive, administrative and legal branches, and to all public servants concerned in the countriés of America, with the request that in the course of their daily duties they will always act in conformity with the above principles.

The participants appeal to the conscience of the scientific community, and the individuals comprising it, who have the moral responsibility for ensuring that their research, studies and practices, as well as the conclusions they draw, cannot be used as a pretext for misrepresentation or interpretations which could harm Indian nations, peoples and ethnic groups.

Finally, the participants draw attention to the need to provide for due participation by genuine representatives of Indian nations, peoples and ethnic groups in any activity that might affect their future.

Panama Declaration of Principles of Indigenous Rights

Adopted by the Fourth General Assembly of the World Council of Indigenous Peoples, Panama, Sept. 1984. Reprinted in U.N. Doc. E/CN.4/1985/22, Annex 2 (1985).

Principle 1

All indigenous peoples have the right of self-determination. By virtue of this right they may freely determine their political status and freely pursue their economic, social, religious and cultural development.

Principle 2

All states within which an indigenous people lives shall recognize the population, territory and institutions of the indigenous people.

Principle 3

The cultures of the indigenous peoples are part of the cultural heritage of mankind.

Principle 4

The tradition and customs of indigenous people must be respected by the states, and recognized as a fundamental source of law.

Principle 5

All indigenous peoples have the right to determine the person or groups of persons who are included within its population.

Principle 6

Each indigenous people has the right to determine the form, structure and authority of its institutions.

Principle 7

The institutions of indigenous peoples and their decisions, like those of states, must be in conformity with internationally accepted human rights both collective and individual.

Principle 8

Indigenous peoples and their members are entitled to participate in the political life of the state.

Principle 9

Indigenous people shall have exclusive rights to their traditional lands and its resources: Where the land and resources of the indigenous peoples have been taken away without their free and informed consent such lands and resources shall be returned.

Principle 10

The land rights of an indigenous people include surface and subsurface rights and interior and coastal waters and rights to adequate and exclusive coastal economic zones within the limits of international law.

Principle 11

All indigenous peoples may, for their own needs, freely use their natural wealth and resources in accordance with Principles 9 and 10.

Principle 12

No action or course of conduct may be undertaken which, directly or indirectly, may result in the destruction of land, air, water, sea ice, wildlife, habitat or natural resources without the free and informed consent of the indigenous peoples affected.

Principle 13

The original rights to their material culture, including archaeological sites, artifacts, designs, technology and works of art lie with the indigenous people.

Principle 14

The indigenous peoples have the right to receive education on their own language or to establish their own educational institutions. The languages of the indigenous peoples are to be respected by the states in all dealings between the indigenous people and the state on the basis of equality and non-discrimination.

Principle 15

The indigenous peoples and their authorities have the right to be previously consulted and to authorize the realization of all technological and scientific investigations to be conducted within their territories and to be informed and full access to the results of the investigation.

Principle 16

Indigenous peoples have the right, in accordance with their traditions, to move freely and conduct traditional activities and maintain kinship relationships across international boundaries.

Principle 17

Treaties between indigenous nations or peoples and representatives of states freely entered into, shall be given full effect under national and international law.

These principles constitute minimum standards which States shall respect and implement.

Geneva Declaration of Principles on the rights of Indigenous Peoples

Adopted by representatives of indigenous peoples and organizations meeting in Geneva, July 1985, in preparation for the fourth session of the United Nations Working Group on Indigenous Populations; as reaffirmed and amended by representatives of indigenous peoples and organizations meeting in Geneva, July 1987, in preparation for the working group's fifth session. Reprinted in U.N. Doc. E/CN.4/Sub.2/1987/22, Annex 5 (1987).

1. Indigenous nations and peoples have, in common with all humanity, the right to life and to freedom from oppression, discrimination, and aggression.

2. All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership and/or citizenship, without external interference.

3. No State shall assert any jurisdiction over an indigenous nation and people, or its territory, except in accordance with the freely expressed wishes of the nation and people concerned.

4. Indigenous nations and peoples are entitled to the permanent control and enjoyment of their aboriginal

ancestral-historical territories. This includes air space, surface and subsurface rights, inland and coastal waters, sea ice, renewable and non-renewable resources, and the economies based on these resources.

5. Rights to share and use land, subject to the underlying and inalienable title of the indigenous nation or people, may be granted by their free and informed consent, as evidenced in a valid treaty or agreement.

6. Discovery, conquest, settlement on a theory of *terra nullius* and unilateral legislation are never legitimate bases for States to claim or retain the territories of indigenous nations or peoples.

7. In cases where lands taken in violation of these principles have already been settled, the indigenous nation or people concerned is entitled to immediate restitution, including compensation for the loss of use, without extinction of original title. Indigenous peoples' right to regain possession and control of sacred sited must always be respected.

8. No State shall participate financially or militarily in the involuntary displacement of indigenous population, or in the subsequent economic exploitation or military use of their territory.

9. The laws and customs of indigenous nations and peoples must be recognized by States legislative, administrative and judicial institutions and, in case of conflicts with Sate laws, shall take precedence.

10. No State shall deny an indigenous nation, community, or people residing within its borders the right to participate in the life of the State in whatever manner and to whatever degree they may choose. This includes the right to participate in other forms of collective action and expression.

11. Indigenous nations and peoples continue to own and control their material culture, including archaeological, historical and sacred sites, artefacts, designs, knowledge, and works of art. They have the right to regain items of major cultural significance and in all cases, to the return of the human

remains of their ancestors for burial according with their traditions.

12. Indigenous nations and peoples have the right to education, and the control of education, and to conduct business with States in their own languages, and to establish their own educational institutions.

13. No technical, scientific or social investigations, including archaeological excavations, shall take place in relation to indigenous nations or peoples or their land, without their prior authorization, and their continuing ownership and control.

14. The religious practices of indigenous nations and peoples shall bee fully respected and protected by the laws of States and by international law. Indigenous nations and peoples shall always enjoy unrestricted access to, and enjoyment of sacred sites in accordance with their own laws and customs, including the right of privacy.

15. Indigenous nations and peoples are subjects of international law.

16. Treaties and other agreements freely made with indigenous nations or peoples shall be recognized and applied in the same manner and according to the same international laws and principles as treaties and agreements entered into with other States.

17. Disputes regarding the jurisdiction, territories and institutions of an indigenous nation or people are a proper concern of international law, and must be resolved by mutual agreement or valid treaty.

18. Indigenous nations and peoples may engage in self-defence against State actions in conflict with their right to self-determination.

19. Indigenous nations and peoples have the right freely to travel, and to maintain economic, social, cultural and religious relations with each other across State borders.

20. In addition to these rights, indigenous nations and peoples are entitled to the enjoyment of all the human rights and fundamental freedom enumerated in the International Bill of Human Rights and other United Nations instruments. In no circumstances shall they be subjected to adverse discrimination.

21. All indigenous nations and peoples have the right to their own traditional medicine, including the right to the protection of vital medicinal plants, animals and minerals. Indigenous nations and peoples also have the right to benefit from modern medical techniques and services on a basis equal to that of the general population of the States within which they are located. Furthermore, all indigenous nations and peoples have the right to determine, plan, implement, and control the resources respecting health, housing, and other social services affecting them.

22. According to the right of self-determination all indigenous nations and peoples shall not be obligated to participate in State military services, including armies, paramilitary or "civil" organizations with military structures, within the country or in international conflicts.

Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries

Adopted by the General Conference of the International Labour Organisation, Geneva, June 27, 1989. Entered into force Sept. 5, 1991.

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989 and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples all regions of the world, have made it appropriate to adopt new international standards

on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United nations Educational, Scientific and Cultural Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Population Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

PART I. GENERAL POLICY

Article 1

1. This Convention applies to:

   (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

   (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

   (a) ensuring that members of these peoples benefit on an equal footing the rights and opportunities which national laws and regulations grant to other members of the populations;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions:

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the people concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the people concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and cooperation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:

   (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

   (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

   (c) establish means for the full development of these peoples own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall

participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matter shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Part II. Land

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of

their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their land shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or

exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a results of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return in not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and Conditions of Employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

   (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

   (b) equal remuneration for work of equal value;

   (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

   (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

   (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

   (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

   (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour other forms of debt servitude;

   (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of that Part of this Convention.

Part IV. Vocational Training, Handicrafts and Rural Industries

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural an community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of

these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive car, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels or health care services.

4. The provision of such health services shall be co-ordinated with other social, economic, and cultural measures in the country.

Part VI. Education and Means of Communication

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the

national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and it the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make know to them their rights and duties, especially in regard to labour, economic opportunities, education and health matter, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Contacts and Co-operation Across Borders

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-

operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

Article 33

1. The governmental responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfillment of the function assigned to them.

   (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention.

   (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken in co-operation with the peoples concerned.

Part IX. General Provisions

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international, treaties or national laws, awards, custom or agreements.

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall no take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention, and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should be Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

   (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

Agenda 21: Chapter 26 of Rio de Janeiro

Adopted by the U.N. Conference on Environment and Development, Rio de Janeiro, June 13, 1992. U.N. Doc. A/CONF. 151/26 (vol. 3), at 16, Annex 2 (1992).

CHAPTER 26

Recognizing and Strengthening the role of Indigenous People and Their Communities

Programme Area

Basis for action

26.1 Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generation a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedom without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable

development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.

26.2 Some of the goals inherent in the objectives and activities of this programme area are already contained in such international legal instruments as the ILO Indigenous and Tribal People Convention (No. 169) and are being incorporate into the draft universal declaration on indigenous rights, being prepared by the United Nations working group on indigenous populations. The International Year for the World's Indigenous People (1993), proclaimed by the General Assembly in its resolution 45/164 of 18 December 1990, presents a timely opportunity to mobilize further international technical and financial cooperation.

Objectives

26.3 In full partnership will indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives:

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

(i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

(ii) Recognition that the land of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;

(iii) Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;

(iv) Recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous people and their communities;

(v) Development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns;

(vi) Support for alternative environmentally sound means of production to ensure a range of choices on how to improve their quality of life so that they effectively participate in sustainable development;

(vii) Enhancement of capacity-building for indigenous communities, based on the adaptation and exchange of traditional experience, knowledge and resource-management practices, to ensure their sustainable development;

(b) Establishment, where appropriate, of arrangements to strengthen the active participation of indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes;

(c) Involvement of indigenous people and their communities at the national and local levels in resource management and conservation strategies and other relevant programmes established to support and review sustainable development strategies, such as those suggested in other programme areas of Agenda 21.

Activities

26.4 Some indigenous people and their communities may require, in accordance with national legislation, greater control over their lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas. The following are some of the specific measures which Governments could take:

(a) Consider the ratification and application of existing international conventions relevant to indigenous people and their communities (where not yet done) and provide support for the adoption by the General Assembly of a declaration on indigenous rights.

(b) Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices.

26.5 United Nations organisations and other international development and finance organisation and Governments should, drawing on the active participation of indigenous people and their communities, as appropriate, take the following measures, *inter alia*, to incorporate their values, views and knowledge, including the unique contribution of indigenous women, in resource management and other policies and programmes that may affect them:

(a) Appoint a special focal point within each international organisation, and organize annual interorganisational coordination meetings in consultation with Governments and indigenous organisations, as appropriate, and develop a procedure within and between operational agencies for assisting Governments in ensuring the coherent and coordinated incorporation of the views of indigenous people in the design and implementation of policies and programmes. Under this procedure, indigenous people and their communities should be informed and consulted and allowed to participate in national

decision-making, in particular regarding regional and international cooperative efforts. In addition, these policies and programmes should take fully into account strategies based on local indigenous initiatives;

(b) Provide technical and financial assistance for capacity-building programmes to support the sustainable self-development of indigenous people and their communities;

(c) Strengthen research and education programmes aimed at:

(i) Achieving a better understanding of indigenous people's knowledge and management experience related to the environment, and applying this to contemporary development challenges;

(ii) Increasing the efficiency of indigenous people's resource management systems, for example, by promoting the adaptation and dissemination of suitable technological innovations;

(d) Contribute to the endeavours of indigenous people and their communities in resource management and conservation strategies (such as those that may be developed under appropriate projects funded through the Global Environmental Facility and Tropical Forestry Action Plan) and other programme areas of Agenda 21, including programmes to collect, analyse and use data and other information in support of sustainable development projects.

26.6 Governments, in full partnership with indigenous people and their communities should, where appropriate:

(a) Develop or strengthen national arrangements to consult with indigenous people and their communities with a view to reflecting their needs and incorporating their values and traditional and other knowledge and practices in national policies and programmes in the

field of natural resource management and conservation and other development programmes affecting them;

(b) Cooperate at the regional level, where appropriate, to address common indigenous issues with a view to recognizing and strengthening their participation in sustainable development.

MEANS OF IMPLEMENTATION

(a) *Financing and cost evaluation*

26.7 The Conference secretariat has estimate the average total annual cost (1993-2000) of implementing the activities of this programme to be about 53 million on grant or concessional terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by Governments. Actual costs and financial terms, including any that are non-concessional, will depend upon, *inter alia*, the specific strategies and programmes Governments decide upon for implementation.

(b) *Legal and administrative frameworks*

26.8 Governments should incorporate, in collaboration with the indigenous people affected, the rights and responsibilities of indigenous people and their communities in the legislation of each country, suitable to the country's specific situation. Developing countries may require technical assistance to implement these activities.

(c) *Human resource development*

26.9 International development agencies and Governments should commit financial and other resources to education and training for indigenous people and their communities to develop their capacities to achieve their sustainable self-development, and to contribute to and participate in sustainable and equitable development at the national level. Particular attention should be given to strengthening the role of indigenous women.

Draft United Nations Declaration On the Rights of Indigenous Peoples

As agreed upon by the members of the U.N. Working Group on Indigenous Populations at its eleventh session, Geneva, July 1993. Adopted by the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities by its resolution 1994/45, August 26, 1994. U.N. Doc. E/CN. 4/1995/2, E/CN.4/Sub.2/1994/56, at 105 (1994).

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.

Affirming also that all peoples contribute to the diversity and richness or civilizations and cultures, which constitute the common heritage of humankind.

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable, and socially unjust.

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*,

in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their culture, spiritual traditions, histories and philosophies.

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur.

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.

Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world.

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children.

Recognizing also, that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination,

Encouraging States to comply with and effectively implement all international instruments, in particular those related to human rights, as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples:

Part I

Article 1

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law,

Article 2

Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 5

Every indigenous individual has the right to a nationality.

Part II

Article 6

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty, and security of person.

Article 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

Article 8

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

Indigenous peoples have the right to special protection and security in periods of armed conflict.

States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian

populations in circumstances of emergency and armed conflict. and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individual to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purpose;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions.

Part III

Article 12

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws traditions and customs.

Article 13

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies, the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measure, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

Article 14

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Part IV

Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17

Indigenous peoples have the rights to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Part V

Article 19

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

Article 21

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic

activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Article 22

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

Part VI

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

Article 26

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Article 27

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or use, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this in not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

Article 28

Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 29

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

Article 30

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Part VII

Article 31

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources managements environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Article 32

Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of

indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 33

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.

Article 34

Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

Article 35

Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders.

States shall take effective measures to ensure the exercise and implementation of this right.

Article 36

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

Part VIII

Article 37

States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

Article 38

Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

Article 39

Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

Article 40

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, *inter alia*, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 41

The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United

Nations bodies shall promote respect for and full application of the provisions of this Declaration.

Part IX

Article 42

The rights recognized herein constitute the minimum standard for the survival, dignity and well-being of the indigenous peoples of the world.

Article 43

All the rights and freedoms recognized herein are equally guaranteed to male an female indigenous individuals.

Article 44

Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Article 45

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

Draft of the Inter-American Declaration of the Rights of Indigenous peoples

Approved by the Inter-American Commission on Human Rights at the 1278th session held on September 18, 1995, O.A.S. Doc. OEA/Ser/L/V/II.90, Dec.9 rev. 1 (1995).

PREAMBLE

1. Indigenous Institutions and the Strengthening of Nations

The Member States of Organization of American States (hereafter the States),

Recalling that the indigenous peoples of the Americas constitute an organized, distinctive and integral segment of their population and are entitled to be part of the countries national identity, and have a special role to play in strengthening the institutions of the State and in establishing national unity based on democratic principles; and

Further recalling that some of the democratic institutions and concepts embodied in the Constitutions of American States originate from institutions of the indigenous peoples, and that in may instances their present participatory systems for decision-making and the internal authority of the indigenous peoples contribute to improving democracies in the America.

2. Eradication of Poverty

Recognizing the severe and widespread poverty afflicting indigenous peoples in many regions of the Americas, and that their

living conditions and social services generally deplorable; and concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting *inter alia* in their colonization and the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.

Recalling that in the Declaration of Principles issued by the Summit of the Americas, in December 1994, the Heads of State and Governments declared that in observance of the International Decade of the World's Indigenous People, they will focus their energies on improving the exercise of democratic rights and the access to social services by indigenous peoples and their communities.

3. Indigenous Culture and Ecology

Appreciating the respect for the environment accorded by the cultures of indigenous peoples of the Americas, and considering the special relationship between the indigenous peoples and the land on which they live.

4. Harmonious Relations, Respect and the Absence of Discrimination

Mindful of the responsibility of all the States and peoples of the Americas to participate in the struggle against racism and racial discrimination.

5. Enjoyment of Community Rights

Recalling the international recognition of rights that can only be enjoyed when exercised in community with other members of a group.

6. Indigenous Survival and Control of Their Territories

Considering that in may indigenous cultures, traditional collective systems for control and use of land and territory, including bodies of water and coastal areas are a necessary condition for their survival, social organization, development and their individual and collective well-being; and that the form of such control and ownership is varied and distinctive and dose not

necessarily coincide with the systems protected by the domestic laws of the States in which they live.

7. Demilitarization of Indigenous Areas

Noting the presence of armed forces in many areas of the lands and territories of the indigenous peoples, and emphasizing the importance of withdrawing them from where they are not strictly needed for their specific functions.

8. Human Rights Instruments and Other Advances in International Law

Recognizing the preeminence and applicability of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and international human rights law, to the States and peoples of the Americas and

Mindful of the progress achieved by the States and indigenous organizations in codifying indigenous rights, especially in the sphere of the United Nations and the International Labour Organization, and in this regard recalling the ILO Agreement 169 and the Draft U.N. Declaration on the Subject.

Affirming the principle of the universality and indivisibility of human rights, and the application of international human rights to all individuals.

9. Advances in the Provisions of National Instruments

Noting the constitutional and legislative progresses achieved in some countries of the Americas in guaranteeing the rights and institutions of indigenous peoples.

Declare:

SECTION ONE. INDIGENOUS PEOPLES

Art. I. Definition

1. In this Declaration indigenous peoples are those who embody historical continuity with societies which existed prior to the conquest and settlement of their territories by Europeans. (alternative 1) [, as well as peoples brought

involuntarily to the New World who freed themselves and re-established the cultures from which they have been torn]. (alternative 2) [, as well as tribal peoples whose social, cultural and economic conditions distinguish them from other section of the national community, and whose status is regulate wholly or partially by their own customs or traditions or by special laws of regulations].

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Declaration apply.

3. The use of them "peoples" in this Instrument shall not be construed as having any implication with respect to any other rights that might be attached to that term in international law.

SECTION TWO. HUMAN RIGHTS

ART.II. FULL OBSERVANCE OF HUMAN RIGHTS

1. Indigenous peoples have the right to full and effective enjoyment of the human rights and fundamental freedoms recognized in the Charter of the OAS, the American Declaration of the Rights and Duties of Man the American Convention on Human Rights, and international human rights, law; and nothing in this Declaration shall be construed as in any way limiting or denying those rights or authorizing any action not in accordance with the instruments of international law including human rights law.

2. The States shall ensure for all indigenous peoples the full exercise of their rights.

3. The States also recognize that the indigenous peoples are entitled to collective rights insofar as they are indispensable to the enjoyment of the individual human rights of their members. Accordingly they recognize the right of the indigenous peoples to collective action, to their cultures, to profess and practice their spiritual beliefs and to use their languages.

Art III. Rights to Belong to an Indigenous Community of Nation

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such .a right.

Art IV. Legal Status of Communities

The States shall ensure that within their legal system personality is attributed to communities of indigenous peoples.

Art.V. No Forced Assimilation

The States shall not take any action which forces indigenous peoples to assimilate and shall not endorse any theory, or engage in any practice, that imports discrimination, destruction of a culture or the possibility of the extermination of any ethnic group.

Art.VI. Special Guarantees against Discrimination

1. The States recognize that, where circumstances so warrant, special guarantees against discrimination may have to be instituted to enable indigenous peoples to fully enjoy internationally and nationally-recognized human rights; and that indigenous peoples must participate fully in the prescription of such guarantees.

2. The States shall also take the measures necessary to enable both indigenous women and men to exercise, without any discrimination, civil, political, economic, social and cultural rights. The States recognize the violence exerted against persons because of their gender prevents and nullifies the exercise of those rights.

SECTION THREE. CULTURAL DEVELOPMENT

Art.VII. Right to Cultural Integrity

1. States shall respect in cultural integrity of indigenous peoples, their development in their respective habitats and their historical and archeological heritage, which are important to the identity of the members of their groups and their ethnic survival.

2. Indigenous peoples are entitled to restitution in respect of property of which they have been dispossessed, or compensation in accordance with international law.

3. States shall recognize, and respect, indigenous life-styles, customs, traditions; forms of social organization, use of dress, languages and dialects.

Art.VIII. Philosophy, Outlook and Language

1. States recognize that indigenous languages, philosophy and outlook are a component of national and universal cultural, and as such shall respect them and facilitate their dissemination.

2. The States shall take measures to see to it that broadcast radio and television programs are broadcast in the indigenous languages in the regions where there is a strong indigenous presence, and to support the creation of indigenous radio stations and other media.

3. The States shall take effective measures to enable indigenous peoples to understand administrative, legal and political rules and procedures and to be understood in relation to these matter. In areas where indigenous languages are predominant, States shall endeavor to establish the pertinent languages as official languages and to give them the same status that is given to non-indigenous official languages.

4. When indigenous peoples wish, educational systems shall be conducted in the indigenous languages and incorporate indigenous content, and that shall also provide the necessary training and means for complete mastery of the official language or languages.

Art.IX. Education

1. Indigenous peoples shall be entitled to (a) establish and set in motion their own educational programs, institutions and facilities; (b) to prepare and implement their own educational plans, programs, curricula and materials; (c) to train, educate and accredit their teachers and administrators. The States shall endeavor to ensure that such systems guarantee equal educational and teaching opportunities for

the entire population and complementarity with national educational systems.

2. States shall ensure that those educational systems are equal in all ways to that provided to the rest of the population.

3. States shall provide financial and any other type of assistance needed for the implementation of the provisions of this Article.

Art.X. Spiritual and Religious Freedom

1. Indigenous peoples have the right to liberty of conscience, freedom of religion and spiritual practice for indigenous communities and their members, a right that implies freedom to conserve them, change them, propagate them, both publicly and privately.

2. States shall take necessary measures to ensure that attempts are not made to forcibly convert indigenous peoples or to impose on them beliefs against the will of their communities.

3. In collaboration with the indigenous peoples concerned, the States shall adopt effective measures to ensure that their sacred sites, including burial sites, are preserved, respected are protected. When sacred graves and relics have been appropriated by state institutions, they shall be returned.

Art.XI. Family Relations and Family Ties

1. Families are a natural and basic component of societies and must be respected and protected by the State. Consequently the State shall protect and respect the various established forms of indigenous organizations relating to family and filiation.

2. In determining the child's best interest in matters relating to the protection and adoption of children of members of indigenous peoples, and in matters of breaking of ties and other similar circumstances, consideration shall be given by Courts and other relevant institutions to the views of those peoples, including individual, family and community views.

Art.XII. Health and Wellbeing

1. The States shall respect indigenous medicine, pharmacology, health practices and promotion, including preventive and rehabilitative practices.

2. They shall facilitate the dissemination of those medicines and practices of benefit to the entire populations.

3. Indigenous peoples have the right to the protection of vital medicinal plants, animals and minerals.

4. Indigenous peoples shall be entitled to use, maintain, develop and manage their own health services, and they shall also have access, without any discrimination to all health institutions and services and medical care.

5. The states shall provide the necessary means to enable the indigenous peoples to eliminate such health conditions in their communities which fall below international accepted standards.

Art.XIII. Right of Environmental Protection

1. Indigenous peoples are entitled to a healthy environment, which is an essential condition for the enjoyment of the right to life and well-being.

2. Indigenous peoples are entitled to information on the environment, including information that might ensure their effective participation in actions and policies that might affect their environment.

3. Indigenous peoples shall have the right to conserve, restore. and protect their environment, and the productive capacity of their lands, territories and resources.

4. Indigenous peoples shall participate fully in formulating and applying governmental programmes of conservation of their lands and resources.

5. Indigenous peoples shall be entitled to assistance from their states for purposes of environmental protection, and may request assistance from international organizations.

SECTION FOUR. ORGANIZATIONAL AND POLITICAL RIGHTS

Art.XIV. Rights of Association, Assembly, Freedom of Expression and Freedom of Thought

1. The States shall promote the necessary measures to guarantee to indigenous communities and their members their right of association, assembly and expression in accordance with their usages, customs, ancestral traditions, beliefs and religions.

2. The States shall respect and enforce the right assembly of indigenous peoples and to the use of their scared and ceremonial areas, as well as the right to full contact and common activities with sectors and members of their ethnic groups living in the territory of neighboring states.

Art.XV. Right to Self-Government, Management and Control of Internal Affairs

1. States acknowledge that indigenous peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development, and that accordingly they have the right to autonomy or self-government with regard to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic, activities, land and resource management, the environment and entry by nonmembers; and to the ways and means for financing these autonomous functions.

2. Indigenous populations have the right to participate without discrimination, if they so decide, in all decision-making, at all levels, with regard to matters that might affect their rights, lives and destiny. They may do so through representatives elected by them in accordance with their own procedures. They shall also have the right to maintain and develop their own indigenous decision-making institutions, as well as equal opportunities to access to all national fora.

Art. XVI. Indigenous Law

1. Indigenous law is an integral part of the States legal system and of the framework in which their social and economic development takes place.

2. Indigenous peoples are entitled to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities, including systems pertaining to ownership of real property and natural resources, resolution of conflicts within and between indigenous communities, crime prevention and law enforcement, and maintenance of internal peace and harmony.

3. In the juridiction of any State, procedures concerning indigenous peoples or their interests shall be conducted in such a way as to ensure the right of indigenous peoples to full representation with dignity and equality before the law. This shall include observance of indigenous law and custom and, where necessary, use of the native language.

Art. XVII. National Incorporation of Indigenous Legal and Organizational Systems

1. The States shall promote the inclusion, in their national organizational structures, of institutions and traditional practices of indigenous peoples.

2. The institutions of each state in areas that are predominantly indigenous or that are serving in those communities, shall be designed and adapted as to reflect and reinforce the identity, culture and organization of those populations, in order to facilitate their participation.

SECTION FIVE. SOCIAL, ECONOMIC AND PROPERTY RIGHTS

Art.XVIII. Traditional Forms of Ownership and Ethnic Survival.

Rights to Land and Territories

1. Indigenous peoples have the right to the legal recognition of the various and specific forms of control, ownership and enjoyment of territories and property by indigenous

peoples.

2. Indigenous peoples have the right to the recognition of their property and ownership rights with respect to land and territories they have historically occupied, as well as to the use of those to which they have historically and access for their traditional activities and livelihood.

3. Where property and user rights of indigenous peoples arise from rights existing prior to the creation of those States, the States shall recognize the titles of indigenous peoples relative thereto as permanent, exclusive, inalienable, imprescriptible and inderfeasible. This shall not limit the right of indigenous peoples to attribute ownership within the community in accordance with their customs, traditions uses and traditional practices, nor shall it affect any collective community rights over them. Such titles may only be changed by mutual consent between the State and respective indigenous people when they have full knowledge and appreciation of the nature or attributes of such property.

4. The rights of indigenous peoples to existing natural resources on their lands must be especially protected. These rights include the right to the use, management and conservation of such resources.

5. In the event that ownership of the minerals or resources of the subsoil pertains to the State or that the State has rights over other resources on the lands, the governments must establish or maintain procedures for the participation of the peoples concerned in determining whether the interest of these people would be adversely affected and to what extent, before undertaking or authorizing any program for tapping or exploiting existing resources on their lands. The peoples concerned shall participate in the benefits of such activities, and shall receive compensation in accordance with international law, for any damages which they may sustain as a result of such activities.

6. The States shall not transfer or relocate indigenous peoples except in exceptional cases, and in those cases with the free, genuine and informed consent of those populations, with

full and prior indemnity and prompt replacement of lands taken, which must be of similar or better quality and which must have the same legal status; and with guarantee of the right to return if the causes that gave rise to the displacement cease to exist.

7. Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise or use, and which have been confiscated occupied, used or damaged, or the right to compensation in accordance with international law when restitution is not possible.

8. The States shall taken all measures, including the use of law enforcement personnel, to avert, prevent and punish, if applicable, any intrusion or use of those lands by unauthorized persons or by persons who take advantage of indigenous peoples or their lack of understanding of the laws, to take possession or make use of them. The States shall give maximum priority to the demarcation of properties and areas of indigenous use.

Art.XIX. Workers Rights

1. Indigenous peoples shall have the right to full enjoyment of the rights and guarantees recognized under international labour law or domestic labour law; they shall also be entitled, where circumstances so warrant, to special measures to correct, redress and prevent the discrimination to which they have historically been subject.

2. Where circumstances so warrant, the States shall take such special measures as may be necessary to:

   a. protect effectively the workers and employee who are members of indigenous communities in respect of fair and equal hiring and terms of employment, insofar as general legislation governing workers overall does not provide;

   b. to improve the work inspection service in regions, companies or paid activities involving indigenous workers or employees;

c. ensure that indigenous workers:

i. enjoy equal opportunity and treatment as regards all conditions of employment, job promotion and advancement;

ii. are not subjected to racial, sexual or other forms of harassment;

iii. are not subjected to coercive hiring practices, including servitude for debts or any other form of servitude, even if they have their origin in law, custom or a personal or collective arrangement which shall be deemed absolutely null and void in each instance;

iv. are not subjected to working conditions that endanger their health, particularly as a result of their exposure to pesticides or other toxic or radioactive substance;

v. receive special protection when they serve as seasonal, casual or migrant workers in agriculture or in other activities and also when they are hired by labour contractors in order that they benefit from national legislation and practice which must, itself be in accordance with firmly established international human rights standards in respect of seasonal workers, and

vi. ensure that indigenous workers or employees are provided with full information on their rights, consistent with such national legislation and international standards, and on recourses available to them in order to protect those rights.

Art.XX. Intellectual Property Rights

1. Indigenous peoples shall be entitled to recognition of the full ownership, control and protection of such intellectual property rights as they have in their cultural and artistic heritage, as well as special measures to ensure for them legal

status and institutional capacity to develop, use, share, market and bequeath, that heritage on to future generations.

2. Where circumstances so warrant, indigenous peoples have the right to special measures to control, develop and protect, and full compensation for the use of their sciences and technologies, including their human and genetic resources in general, seeds, medicine, knowledge of plant and animal life, original designs and procedures.

Art. XXI. Right to Development

1. The states recognize the right of indigenous peoples to decide democratically what values, objectives, priorities and strategies will govern and steer their development course even if they are different from those adopted by the national government or by other segments of society. Indigenous peoples shall be entitled to obtain on a non-discriminatory basis appropriate means for their own development according to their preferences and values, and to contribute by their own means as distinguishable societies, to national development and international cooperation.

2. The States shall take necessary measures to ensure that decisions regarding any plan, program or proposal affecting the rights or living conditions of indigenous people are not made without the free and informed consent and participation of those peoples, that their preferences are recognized and that no such plan, program or proposal that could have harmful effects on the normal livelihood of those populations is adopted. Indigenous communities have the right to restitution or compensation in accordance with international law, for any damage which, despite the foregoing precautions, the execution of those plans or proposal may have caused them; and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

SECTION SIX. GENERAL PROVISIONS

Art.XXII. Treaties, Agreements and Other Implied Arrangements

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other

arrangements concluded with States or their successors, according to their spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies (agreed to by all parties concerned).

Art.XXIII

Nothing in this instrument shall be construed as diminishing or extinguishing existing or future rights indigenous people may have or acquire.

Art. XXIV

Nothing in this instrument shall be construed as granting any rights to ignore boundaries between States.

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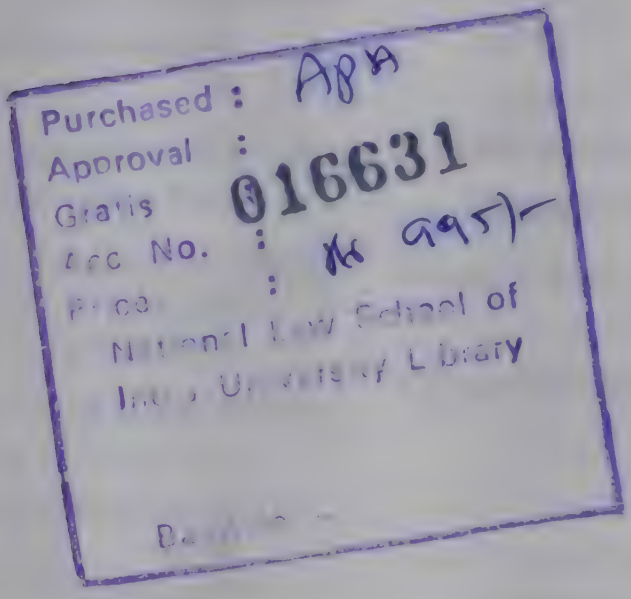

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